IOWA ADMINISTRATIVE BULLETIN

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October 12, 2005 Pages 549 to 620

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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Iowa Administrative Bulletin

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Legislative Services Agency
Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making
2005

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
May 18	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
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July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
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Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
10	**Friday, October 21, 2005**	**November 9, 2005**
11	**Friday, November 4, 2005**	**November 23, 2005**
12	**Wednesday, November 16, 2005**	**December 7, 2005**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

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Parking, 101.2, 101.3, 101.5 to 101.7, 101.9(4) IAB 9/28/05 **ARC 4528B**	Conference Room 04, Level A−South Hoover State Office Bldg. Des Moines, Iowa	October 18, 2005 10 a.m.
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Real estate lending—evidence of title, 9.2 IAB 9/28/05 **ARC 4541B**	Division Conference Room Suite 370, 200 E. Grand Des Moines, Iowa	October 18, 2005 10 a.m.
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Services provided to new patients, 10.3(2) to 10.3(6) IAB 9/28/05 **ARC 4535B**	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 18, 2005 2 p.m.
Deep sedation/general anesthesia and conscious sedation permits, 29.11 IAB 9/28/05 **ARC 4536B**	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 18, 2005 2 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Iowa wine and beer promotion grant program, ch 104 IAB 10/12/05 **ARC 4583B**	Tourism Conference Room 200 E. Grand Ave. Des Moines, Iowa	November 1, 2005 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Substitute teacher's license, 14.119(1), 14.119(3) IAB 10/12/05 **ARC 4581B**	Room 3 North Grimes State Office Bldg. Des Moines, Iowa	November 1, 2005 1 p.m.
EDUCATION DEPARTMENT[281]		
General accreditation standards, 12.3(4), 12.4, 12.5(5) IAB 9/28/05 **ARC 4529B**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 18, 2005 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Water quality standards, 61.2(5), 61.3 IAB 9/14/05 **ARC 4504B**	Farmers and Merchants Savings and Trust 101 E. Main St. Manchester, Iowa	October 12, 2005 11 a.m.
	Community Y 121 E. Main St. Washington, Iowa	October 12, 2005 7 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	October 14, 2005 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Water quality standards—warm water designations, 61.3 IAB 9/14/05 **ARC 4505B**	Farmers and Merchants Savings and Trust 101 E. Main St. Manchester, Iowa	October 12, 2005 11 a.m.
	Community Y 121 E. Main St. Washington, Iowa	October 12, 2005 7 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	October 14, 2005 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

HCBS waiver—children's mental health services, amendments to chs 77 to 79, 83, 90 IAB 10/12/05 **ARC 4561B** (See also **ARC 4562B** herein)	Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa	November 1, 2005 8:30 a.m.
	ICN Room Pottawattamie County DHS Office 417 E. Kanesville Blvd. Council Bluffs, Iowa	November 1, 2005 1:30 p.m.
	Fifth Floor Conference Rm, Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	November 1, 2005 10 a.m.
	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	November 2, 2005 9 a.m.
	Second Floor Conference Room Story County Human Services Bldg. 126 S. Kellogg St. Ames, Iowa	November 2, 2005 10 a.m.
	Sixth Floor Conference Room Scott County Administrative Center 428 Western Ave. Davenport, Iowa	November 2, 2005 10 a.m.
	Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	November 2, 2005 10 a.m.
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Biologically based mental illness coverage, 35.3(3); rescind 35.30 IAB 10/12/05 **ARC 4570B**	330 Maple St. Des Moines, Iowa	November 2, 2005 10 a.m.
Model provisions for coordination of benefits, 38.12 to 38.19 IAB 10/12/05 **ARC 4571B**	330 Maple St. Des Moines, Iowa	November 1, 2005 10 a.m.

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Fees for elevator alteration permits, 75.2 IAB 10/12/05 **ARC 4566B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	November 3, 2005 8:30 a.m. (If requested)

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Cosmetology arts and sciences—temporary permits, 60.9, 60.10 IAB 9/28/05 **ARC 4527B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 18, 2005 8:30 to 9 a.m.
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Mortuary science, 100.1, 100.6, 101.6, 101.10, 101.14 IAB 9/28/05 **ARC 4543B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 18, 2005 9:30 to 10 a.m.
Mortuary science—fee increases, 105.1 IAB 9/28/05 **ARC 4542B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 18, 2005 9:30 to 10 a.m.
Massage therapists—licensure; fees, 131.2, 131.8, 135.1 IAB 9/28/05 **ARC 4524B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 18, 2005 8:30 to 9 a.m.
Athletic trainers, 351.9(2), 354.1 IAB 10/12/05 **ARC 4560B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	November 3, 2005 10 to 10:30 a.m.

PUBLIC SAFETY DEPARTMENT[661]

State building code, rescind 16.1 to 16.500, 16.700 to 16.802; adopt chs 300 to 303 IAB 9/14/05 **ARC 4514B**	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	October 18, 2005 10 a.m.
(ICN Network)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 13, 2005 1 to 3 p.m.
	Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. Cedar Rapids, Iowa	October 13, 2005 1 to 3 p.m.
	Educational Services Center Admin. 12 Scott St. Council Bluffs, Iowa	October 13, 2005 1 to 3 p.m.
	Turner Room Green Valley AEA 1405 N. Lincoln Creston, Iowa	October 13, 2005 1 to 3 p.m.
	Forum Building 2300 Chaney Dubuque, Iowa	October 13, 2005 1 to 3 p.m.
	Room 818, Smith Wellness Center Iowa Lakes Community College 3200 College Dr. Emmetsburg, Iowa	October 13, 2005 1 to 3 p.m.
	Room 128, Careers Bldg. North Iowa Area Community College 500 College Dr. Mason City, Iowa	October 13, 2005 1 to 3 p.m.
	High School 2104 S. Grand Mount Pleasant, Iowa	October 13, 2005 1 to 3 p.m.
	Room 925, Bldg. A Western Iowa Tech Community College 4647 Stone Ave. Sioux City, Iowa	October 13, 2005 1 to 3 p.m.
	Room 8, Bldg. 6, Ankeny Campus Des Moines Area Community College 2006 S. Ankeny Blvd. Ankeny, Iowa	October 13, 2005 6 to 8 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	October 13, 2005 6 to 8 p.m.
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(ICN Network)

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State historic building code, adopt ch 350 IAB 9/14/05 **ARC 4515B**	For locations, dates and times of ICN hearings, see **ARC 4514B** above.	

RAILWAY FINANCE AUTHORITY[765]

Railroad revolving loan and grant fund program, adopt ch 5 IAB 9/28/05 **ARC 4523B**	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	October 20, 2005 10 a.m. (If requested)

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Reimbursement rate of automobile mileage for court-appointed attorneys, 12.8(1) IAB 9/28/05 **ARC 4540B** (See also **ARC 4539B**)	Conference Room 319 Lucas State Office Bldg. Des Moines, Iowa	October 18, 2005 9 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 4583B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt new Chapter 104, "Iowa Wine and Beer Promotion Grant Program," Iowa Administrative Code.

The proposed new rules establish a grant program for the promotion of Iowa wine and beer. The rules describe the application process, eligible applicants, eligible activities and the application review process.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on November 1, 2005. Interested persons may submit written or oral comments by contacting LuAnn Reinders, Office of Tourism, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4732.

A public hearing to receive comments about the proposed new chapter will be held on November 1, 2005, at 2 p.m. at the above address in the Tourism Conference Room.

These rules are intended to implement Iowa Code section 15E.117.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

CHAPTER 104
IOWA WINE AND BEER PROMOTION
GRANT PROGRAM

261—104.1(15) Purpose. The purpose of the Iowa wine and beer promotion grant program is to provide marketing funds to promote native Iowa wineries and breweries through festivals and events.

261—104.2(15) Definitions.

"Board" means the Iowa wine and beer promotion board created in Iowa Code section 15E.116.

"Category" means a native Iowa winery(ies) or a native Iowa brewery(ies).

"Department" or "IDED" means the Iowa department of economic development.

"Group" means at least three native Iowa wineries or breweries, unless there are fewer than three licensees in either category. If there are fewer than three licensees in a category, then all of the licensees in that category must be included in the event.

"Native Iowa wineries or breweries" means Iowa wineries and breweries that hold a Class "A" wine or beer permit.

261—104.3(15) Application and review processes. Subject to availability of funds, applications are reviewed and rated by IDED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the IDED staff will be submitted to the director of the department for final approval, denial or deferral. Applicants shall be notified in writing following the department's final action.

104.3(1) Eligible applicants. To qualify for funding, applicants must include a group of at least three native Iowa wineries or breweries, unless there are fewer than three licensees in either category. If there are fewer than three licensees in a category, then all of the licensees in that category must be included in the event. There shall be a maximum of one award per group per fiscal year.

104.3(2) Eligible activities. Eligible projects may include, but are not limited to, advertising placement in newspapers, billboards, magazines, radio, television, and Web advertising. Promotional pieces such as flyers, table tents, punch cards or coasters are eligible, as well as advertising specialty items. Other forms of marketing may also be eligible as determined through the review process.

104.3(3) Application availability and content. Applications must be completed and submitted to the department. Application materials may be obtained from IDED, Office of Tourism, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4737; or through IDED's Web site at www.iowalifechanging.com. The grant application materials will indicate how much funding is available for the fiscal year and the maximum grant amount available. The applicant shall submit a grant application, which shall include, but not be limited to:

a. Requirements for using the Iowa wine and beer logo;
b. Project identification;
c. Project budget;
d. Fifty percent matching funds (cash or in-kind contributions);
e. List of participating wineries or breweries, or both;
f. Anticipated number of attendees;
g. Dates and location of festival or event;
h. Contact information.

104.3(4) Contract required. Successful applicants shall enter into a grant agreement with the department. The department shall prepare an agreement, which includes, but is not limited to, a description of the allowable activities; length of the grant period; conditions to disbursement of funds, if any; and default and termination procedures.

These rules are intended to implement Iowa Code section 15E.117.

ARC 4581B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practition-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

er's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendments permit applicants who successfully completed a teacher preparation program but who did not apply for an Iowa teaching license at the time of completion of the approved program an opportunity to be a substitute teacher. The amendments also permit an individual who holds only an administrative license to substitute teach.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, November 1, 2005, at 1 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, November 4, 2005. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 14.119(1) as follows:

14.119(1) A substitute teacher's license may be issued to an individual who:

a. Has been the holder of, or presently holds, a license in Iowa; or holds or held a regular teacher's license or certificate in another state, exclusive of temporary, emergency, substitute certificate or license, or a certificate based on an alternative certification program; ~~or~~

b. Has successfully completed all requirements of an approved teacher education program and is eligible for the initial license, but has not applied for and been issued this license, or who meets all requirements for the initial license with the exception of the degree but whose degree will be granted at the next regular commencement.*; or*

c. Has successfully completed all requirements of an approved Iowa teacher education program, but did not apply for an Iowa teaching license at the time of the completion of the approved program.

ITEM 2. Amend subrule 14.119(3) as follows:

14.119(3) The holder of a substitute license is authorized to teach in any school system in any position in which a regularly licensed teacher was employed to begin the school year. In addition to the authority inherent in the provisional, initial, educational, standard, professional teacher, master educator, *professional administrator,* two-year exchange, and permanent professional licenses and the endorsement(s) held, the holder of one of these regular licenses may substitute on the same basis as the holder of a substitute license while the regular license is in effect.

ARC 4582B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Termination

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 17, 2005, as **ARC 4440B**, proposing to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Chapter 17, "Renewal of Licenses," Chapter 19, "Coaching Authorization," Chapter 20, "Evaluator Endorsement and License," Chapter 21, "Behind-the-Wheel Driving Instructor Authorization," and Chapter 22, "Paraeducator Certificates," Iowa Administrative Code.

The proposed amendments, which increased fees for licenses and authorizations, were also Adopted and Filed Emergency and published August 17, 2005, as **ARC 4442B**. The Notice was published to solicit comments and to provide opportunity for a hearing. Since no comments were received, no one appeared at the hearing, and no changes are required to the emergency adopted rules, there is no further need to proceed with rule making for **ARC 4440B**.

ARC 4563B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Termination

Pursuant to the authority of Iowa Code sections 17A.4 and 455B.133, the Environmental Protection Commission hereby terminates the Notice of Intended Action to amend Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 22, "Controlling Pollution," and Chapter 31, "Nonattainment Areas," and to adopt Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Nonattainment Areas and Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code, that was published in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 4005B**.

On December 31, 2002, the U.S. Environmental Protection Agency (EPA) promulgated revisions to the major New Source Review (NSR) rules. The NSR program contained in Parts C and D of Title I of the Clean Air Act is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Clean Air Act. The rules promulgated by EPA in December 2002 are commonly referred to as the NSR Reform rules. These rules required states to adopt the changes by January 6, 2006.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Beginning in March 2004, the Department convened a technical workgroup (facilitated by the Iowa Department of Economic Development) to review the elements of the major NSR program affected by the federal rule revisions. The workgroup was tasked with making recommendations to the Department regarding the adoption of the federal rules into the Iowa Administrative Code. The Department incorporated the workgroup's recommendations to draft the Notice of Intended Action proposing to adopt the NSR Reform rules.

The Notice was approved by the Environmental Protection Commission on January 18, 2005. The Notice was published in the Iowa Administrative Bulletin as **ARC 4005B** on February 16, 2005. Pursuant to the Notice, public hearings were held on March 18 and March 23, 2005. No comments were submitted to the Department at the public hearings. At the request of EPA Region VII, the Department extended the public comment period to May 2, 2005. The Amended Notice of Intended Action extending the comment period was published in the Iowa Administrative Bulletin as **ARC 4128B** on April 27, 2005. The Department received EPA's written comments, as well as one additional written comment letter, prior to the end of the extended public comment period.

In May and June 2005, the Department and EPA Region VII met to discuss EPA's comments on the Notice. The Department was in the process of resolving the comments with EPA when the U.S. Appeals Court, District of Columbia, issued a ruling on June 24, 2005, on the petitions filed against the federal NSR Reform rules.

The court upheld many of the NSR Reform provisions, but also vacated and remanded back to EPA some of the significant components. The court upheld the Plant-wide Applicability Limits (PALs) provisions, the Baseline Actual Emissions (BAE) test, and the Projected Actual Emissions (PAE) tests. The court vacated the Clean Unit provisions and the Pollution Control Project (PCP) provisions. The court remanded back to EPA certain record-keeping provisions for sources.

The court ruling has serious implications for Iowa's NSR reform rule making. On August 8, 2005, EPA formally requested that the court reconsider its ruling. However, according to EPA Region VII, the regional offices have not received any guidance from EPA Headquarters on how to proceed with NSR reform.

The Department has asked EPA Region VII to provide directions and guidance as soon as possible. The Department is also committed to adopting final NSR Reform rules that will be acceptable to EPA, and ultimately approved into Iowa's state implementation plan (SIP). However, final adoption does not appear to be possible at this time.

In light of these recent developments, the Department is terminating the Notice of Intended Action. The Department must either issue a final rule or terminate the Notice by September 23, 2005. Given this procedural deadline, and the current absence of EPA guidance, terminating this rule making is the most logical course of action at this time. The Department will continue to implement the current NSR rules contained in rules 567—22.4(455B) and 567—22.5(455B).

The Department is resolute in building on the momentum from the NSR Reform workgroup's considerable efforts and resulting recommendations. As such, the Department will begin working on a new Notice of Intended Action as soon as guidance from EPA becomes available.

ARC 4568B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 225C.6 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services proposes to amend Chapter 24, "Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities," Iowa Administrative Code.

2005 Iowa Acts, House File 538 and House File 841, directed the Department to apply for a waiver to provide Medicaid services to children in need of treatment to cure or alleviate serious mental illness or disorder or emotional damage who would qualify for the care provided by a psychiatric mental institution for children and whose parents are unable to provide such treatment. The children's mental health demonstration waiver was approved July 1, 2005. 2005 Iowa Acts, House File 538, section 4, subsection 4, requires that children receiving services under the waiver shall have access to case management services.

Counties may designate the case management agency for the children's mental health population as they do for people with mental retardation, chronic mental illness, or developmental disabilities. The county may designate an existing agency that serves those populations and is currently certified by the Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission, or may designate an agency that specializes in service to children with serious emotional disturbance and that is not currently certified by the Commission.

These amendments contribute toward the implementation of the waiver by:

- Recognizing a new target population for accredited case management services through a definition of "severe emotional disturbance."
- Specifying a new performance standard for case management services to children with a severe emotional disturbance by requiring a case manager-to-child ratio of no more than 1 to 15. A lower ratio is necessary because it is anticipated that the children served in this waiver will require more intensive services, including coaching and follow-up with families, coordination with local and area education agencies and juvenile court services, and frequent crisis intervention and modification of case plans.

These amendments also make technical corrections to language referencing the Commission, in conformance with changes made in Iowa Code chapter 225C by 2004 Iowa Acts, chapter 1090, sections 4 and 5.

These amendments do not provide for waivers in specified situations. Agencies may request a waiver of these provisions under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before November 2, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover

State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4569B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 225C.6; 2005 Iowa Acts, House File 538, sections 3 and 4; and 2005 Iowa Acts, House File 841, section 13.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 4561B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 83, "Medicaid Waiver Services," and Chapter 90, "Case Management for People With Mental Retardation, Chronic Mental Illness, or Developmental Disabilities," Iowa Administrative Code.

These amendments implement a new category of Medicaid waiver services, the children's mental health services waiver. The waiver was approved at the federal level as a demonstration waiver under Section 1115a of the Social Security Act, but is being administered as a Medicaid home- and community-based services (HCBS) waiver.

The children's mental health services waiver will cover environmental modifications, adaptive devices, and therapeutic resources; family and community support services; in-home family therapy; and respite for up to 300 children under the age of 18. Eligible children must have a diagnosis qualifying as a "severe emotional disturbance" and have service needs that qualify for the level of care offered in a psychiatric hospital for children. As with other HCBS waivers, consumers must meet the requirements of a Medicaid coverage group except for the consumers' institutional status, and must choose waiver services over institutional services.

Consumers approved for the children's mental health waiver must also receive Medicaid case management services. These amendments revise definitions in Chapter 90 to add waiver-eligible children to the targeted population for case management services.

The amendments also include technical changes to remove an obsolete reference to child welfare targeted case management and to correct a form number.

These amendments do not provide for waivers in specified situations. Consumers and providers may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4562B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before November 3, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

Interested persons may also present their views either orally or in writing at the public hearings to be held at the places and times listed below. Any person who intends to attend a public hearing and requires special accommodations for specific needs such as hearing or mobility impairments should contact the Office of Policy Analysis at (515)281-2440.

Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa	Tuesday, November 1, 2005 8:30 a.m.
ICN Room Pottawattamie County DHS Office 417 E. Kanesville Blvd. Council Bluffs, Iowa	Tuesday, November 1, 2005 1:30 p.m.
Fifth Floor Conference Room Iowa Building 411 Third St. SE Cedar Rapids, Iowa	Tuesday, November 1, 2005 10 a.m.
Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	Wednesday, November 2, 2005 9 a.m.
Second Floor Conference Room Story County Human Services Building 126 S. Kellogg St. Ames, Iowa	Wednesday, November 2, 2005 10 a.m.
Sixth Floor Conference Room Scott County Administrative Center 428 Western Ave. Davenport, Iowa	Wednesday, November 2, 2005 10 a.m.
Room 220 Pinecrest Office Building 1407 Independence Ave. Waterloo, Iowa	Wednesday, November 2, 2005 10 a.m.
Room B, First Floor Trosper-Hoyt Building 822 Douglas St. Sioux City, Iowa	Thursday, November 3, 2005 9 a.m.
Conference Room Wapello County Department of Human Services 120 E. Main St. Ottumwa, Iowa	Thursday, November 3, 2005 10 a.m.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement 2005 Iowa Acts, House File 841, section 13, and House File 538, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 4579B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, "Hospitals," Iowa Administrative Code.

The proposed amendment clarifies rules pertaining to the determination of death for purposes of organ and tissue requests and procurement by striking language which is inconsistent with Iowa Code section 702.8. The effect of the proposed amendment will be to allow licensed physician assistants, licensed registered nurses, and licensed practical nurses to pronounce a person's death.

The Department has determined that there is no fiscal impact associated with the proposed amendment as it simply conforms the rules to Iowa law. No waiver language is provided as Iowa Code section 702.8 specifically permits certain licensed health care practitioners to make a pronouncement of death.

The proposed amendment was presented to the Hospital Licensing Board at its July 27, 2005, meeting at which time it was approved by the Board. The State Board of Health initially reviewed the proposed amendment at its September 14, 2005, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before November 1, 2005. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

This amendment is intended to implement Iowa Code sections 10A.104(5) and 135B.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 51.8(2) as follows:

51.8(2) Determination of death.

a. No organ or tissue shall be removed from a donor until death has been determined according to the requirements of Iowa law and generally acceptable standards of medical practice.

b. Death is defined by Iowa Code section 702.8 ~~as a condition determined by the following standards:~~

~~A person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased~~.

c. The surgeon performing the organ removal shall not participate in the determination of brain death.

d. The patient's medical record shall include documentation of the date and time of death and identification of the ~~physician or physicians~~ *practitioner or practitioners* who determined death.

ARC 4580B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 61, "Minimum Physical Standards for Nursing Facilities," Iowa Administrative Code.

The proposed amendment addresses electrical requirements for nursing facilities by permitting the use of wireless calling systems in lieu of nurse calling stations. The Department routinely receives requests for waivers from the requirements dealing with nurse calling stations, which provide for two-way voice communication and a visible signal in the corridor at a resident's door. Modern technology now makes it possible for nursing facilities to use wireless systems, which use pagers to alert health facilities staff of a resident in need of assistance. The proposed amendment stipulates the minimum requirements for nursing facilities desiring to install wireless calling systems.

The Department has determined that there may be a fiscal impact for nursing facilities desiring to install wireless calling systems, either in new construction or during remodeling projects. The use of a wireless calling system is not mandated by law or rule so no waiver provision is contained in the proposed amendment.

The State Board of Health initially reviewed the proposed amendment at its September 14, 2005, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before November 1, 2005. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

This amendment is intended to implement Iowa Code sections 10A.104(5) and 135C.14.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **61.12(9)** by adding **new** paragraphs **"g," "h," "i"** and **"j"** as follows:

g. As an alternative to a hardwired nurse calling station with a visible signal in the corridor at a resident's room, a wireless calling system that provides an acceptable means of identifying the origin or location of a call is acceptable, if the system specifications are first reviewed and approved by the department prior to installation.

h. A wireless calling system shall be connected to an emergency power source to ensure operation during a power outage.

i. Pagers used as part of a wireless calling system shall have a self-diagnostic system to alert the user of a low battery.

j. For wireless calling systems utilizing two-way communication devices, a visible indicator shall be placed in a resident's room to indicate when the system is operable and conversations may be heard.

ARC 4570B

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 505.8 and 509.13, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 35, "Accident and Health Insurance," Iowa Administrative Code.

These amendments update Chapter 35 to conform to the recently enacted amendment to the Iowa Code, 2005 Iowa Acts, House File 420, creating new Iowa Code section 514C.22 relating to biologically based mental illness coverage. These amendments are required to bring Iowa rules into compliance with the new law.

The main focus of these amendments is to comply with 2005 Iowa Acts, House File 420, that creates new Iowa Code section 514C.22(4), which directs that the Commissioner shall, by rule, define the biologically based mental illnesses identified in 2005 Iowa Acts, House File 420, section 1 [new Iowa Code section 514C.22(3)]. The amendments also rescind outdated language in Chapter 35 relating to mental health benefits.

These amendments do not contain a waiver provision. The Iowa Insurance Division (IID) has previously adopted a general waiver provision in 191—Chapter 4.

A public hearing will be held at the offices of the IID at 10 a.m. on November 2, 2005. The IID is located at 330 Maple Street, Des Moines, Iowa 50319. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any person who intends to attend the public hearing and requires special accommodations should contact the IID at (515)281-5705. Any interested person may make written comments on the proposed amendments on or before November 2, 2005. Written comments should be sent to Kevin Howe, Compliance Officer, at the address listed above. Comments may be submitted electronically to kevin.howe@iid.state.ia.us.

These amendments are intended to implement Iowa Code chapter 514C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 191—35.3(509) by adding **new** subrule 35.3(3) as follows:

35.3(3) For purposes of 2005 Iowa Acts, House File 420, section 1, relating to biologically based mental illness coverage in a group policy, contract or plan providing for third-party payment of health, medical, and surgical coverage benefits issued by a carrier or by an organized delivery system, "biologically based mental illness" shall mean the following psychiatric illnesses as they are defined in the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, as such definitions may be amended from time to time:

a. Schizophrenia.
b. Bipolar disorders.
c. Major depressive disorders.
d. Schizo-affective disorders.
e. Obsessive-compulsive disorders.
f. Pervasive development disorders.
g. Autistic disorders.

ITEM 2. Rescind and reserve rule **191—35.30(509)**.

ARC 4571B

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 38, "Coordination of Benefits," Iowa Administrative Code.

This amendment updates Chapter 38 to create a new Division II which contains the recently adopted amendments to the National Association of Insurance Commissioners (NAIC) Model Regulation on Coordination of Benefits.

The main focus of this rule making is to add specificity to the order of benefit determination rules. The new rules contain specific guidance in the case of dependent children, for persons who are retired or laid off, or on COBRA. The rules

contain a dispute resolution procedure and expanded definitions of numerous terms. The rules also contain a consumer guide to coordination of benefits.

This amendment does not contain a waiver provision. The Insurance Division has previously adopted a general waiver provision in 191—Chapter 4.

A public hearing will be held at the offices of the Insurance Division at 10 a.m. on November 1, 2005. The Insurance Division is located at 330 Maple Street, Des Moines, Iowa 50319. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Any person who intends to attend the public hearing and requires special accommodations should contact the Insurance Division at (515)281-5705.

Any interested person may make written comments on the proposed amendment on or before November 1, 2005. Written comments should be sent to Rosanne Mead, Assistant Insurance Commissioner, at the address listed above. Comments may be submitted electronically to rosanne.mead@iid.state.ia.us.

These rules are intended to implement Iowa Code chapters 509 and 514.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend 191—Chapter 38 by adopting a **new** Division I heading to precede existing rules 191—38.1(509,514) through 191—38.11(509,514) and adopting the following **new** Division II:

DIVISION II

191—38.12(509,514) Purpose and applicability.

38.12(1) The purpose of this division is to adopt the new model provisions for coordination of benefits (COB) as promulgated by the National Association of Insurance Commissioners (NAIC).

38.12(2) This division is intended to establish a uniform order of benefit determination under which plans pay claims; to reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, pursuant to rules established in this division, do not have to pay benefits first; and to provide greater efficiency in the processing of claims when a person is covered under more than one plan.

38.12(3) These rules apply to all plans that are issued on or after [insert the effective date of these rules].

191—38.13(509,514) Definitions. As used in this division, these terms have the following meanings, unless the context clearly indicates otherwise:

"Allowable expense," except as set forth below or where a statute requires a different definition, means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

1. If a plan is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223(c)(2)(C) of the Internal Revenue Code of 1986.

2. An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

3. Any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an allowable expense.

4. The following are examples of expenses that are not allowable expenses:

a. If a person is confined in a private hospital room, the difference between the cost of a semiprivate room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

b. If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

c. If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

d. If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology and by another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different from the primary plan's payment arrangement and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

5. The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of "allowable expense" in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of "allowable expense" shall include similar expenses to which COB applies.

6. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

7. The amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan:

a. Because the covered person does not comply with the plan provisions concerning second surgical opinions or precertification of admissions or services; or

b. Because the covered person has a lower benefit because the covered person did not use a preferred provider.

"Birthday" refers only to month and day in a calendar year and does not include the year in which the individual is born.

"Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of services (including supplies); payment for all or a portion of the expenses incurred; a combination of services or expenses incurred; or an indemnification.

"Closed panel plan" means a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are

employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

"Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA" means coverage provided under a right of continuation pursuant to federal law.

"Coordination of benefits" or "COB" means a provision establishing an order in which plans pay their claims and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

"Custodial parent" means the parent awarded custody of a child by a court decree or, in the absence of a court decree, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation.

"Group-type contract" means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage. "Group-type contract" does not include an individually underwritten and issued guaranteed renewable policy even if the policy is purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer.

"High-deductible health plan" has the meaning given the term under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

"Hospital indemnity benefits" means benefits not related to expenses incurred. "Hospital indemnity benefits" does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

"Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in paragraph 1 below. A model COB provision is contained in Appendix A of this division.

1. "Plan" includes:

a. Group insurance contracts and subscriber contracts;

b. Uninsured arrangements of group or group-type coverage;

c. Group coverage through closed panel plans;

d. Group-type contracts;

e. The medical care components of group long-term care contracts, such as skilled nursing care;

f. The medical benefits coverage in automobile "no fault" and traditional automobile "fault" contracts; and

g. Medicare or other governmental benefits, as permitted by law, except as provided in paragraph 2"h" below. This part of a plan may be limited to the hospital, medical and surgical benefits of the governmental program.

2. "Plan" does not include:

a. Hospital indemnity coverage benefits or other fixed indemnity coverage;

b. Accident-only coverage;

c. Specified disease or specified accident coverage;

d. Limited benefit health insurance coverage, as defined in 191—subrule 36.6(10);

e. School accident-type coverages that cover students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis;

f. Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

g. Medicare supplement policies;

h. A state plan under Medicaid; or

i. A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan.

"Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a "primary plan" if:

1. The plan either has no order of benefit determination rules, or its rules differ from those permitted by this division; or

2. All plans that cover the person use the order of benefit determination rules required by this division, and under those rules the plan determines its benefits first.

"Secondary plan" means a plan that is not a primary plan.

191—38.14(509,514) Use of model COB contract provision.

38.14(1) Appendix A of this division contains a model COB provision for use in contracts. The use of this model COB provision is subject to the provisions of subrules 38.14(2) through 38.14(4) and to rule 38.15(509,514).

38.14(2) Appendix B of this division is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. Appendix B is not intended to replace or change the provisions that are set forth in the contract. The purpose of Appendix B is to explain the process by which two or more plans will pay for or provide benefits.

38.14(3) The COB provision contained in the appendices to this division do not have to use the specific words and format shown in the appendices. Changes may be made to fit the language and style of the rest of the contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. No substantive changes are permitted.

38.14(4) A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

a. Another plan exists and the covered person did not enroll in that plan;

b. A person is or could have been covered under another plan, except with respect to Part B of Medicare; or

c. A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

38.14(5) No plan may contain a provision that states that its benefits are "always excess" or "always secondary" except in accordance with this division.

38.14(6) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability.

However, COB may occur during the plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use the provisions of rule 38.16(509,514) to determine the amount it should pay for the benefit.

38.14(7) No plan may use a COB provision or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of "plan" under rule 38.13(509,514).

191—38.15(509,514) Rules for coordination of benefits. When a person is covered by two or more plans, the order of benefit payments shall be determined as follows:

38.15(1) Primary plans. The primary plan shall pay or provide its benefits as if the secondary plan or plans do not exist.

a. If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a non-panel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

b. When multiple contracts providing coordinated coverage are treated as a single plan under this division, this subrule applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan shall be responsible for the plan's compliance with this division.

c. If a person is covered by more than one secondary plan, the order of benefit determination rules of this division decide the order in which secondary plans benefits are determined in relation to each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the rules of this division, has its benefits determined before those of that secondary plan.

38.15(2) Inconsistent plans.

a. Except as provided in paragraph "b," a plan that does not contain order of benefit determination provisions that are consistent with this division is always the primary plan unless the provisions of both plans, regardless of the provisions of this paragraph, state that the complying plan is primary.

b. Coverage that is obtained by virtue of membership in a group and is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

38.15(3) Consideration of other plans. A plan may take into consideration the benefits paid or provided by another plan only when, under the provisions of this division, it is secondary to the other plan.

38.15(4) Order of benefit determination. Each plan determines its order of benefits using the first of the following rules that applies:

a. Nondependent or dependent.

(1) Subject to subparagraph 38.15(4)"a"(2), the plan that covers the person other than as a dependent, for example, as an employee, member, subscriber, policyholder or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

(2) If the person is a Medicare beneficiary and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is secondary to the plan covering the person as a dependent and primary to the plan covering the person as other than a dependent (e.g., a retired employee), then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

b. Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child shall determine the order of benefits as follows:

(1) For a dependent child whose parents are married or are living together, whether or not they have ever been married, the plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or if both parents have the same birthday, the plan that has covered one of the parents the longest is the primary plan.

(2) For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

1. If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does have health care coverage, that parent's spouse's plan is the primary plan. This item shall not apply with respect to any plan year during which benefits are paid or provided before the entity has actual knowledge of the court decree provision;

2. If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of subparagraph 38.15(4)"b"(1) shall determine the order of benefits;

3. If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of subparagraph 38.15(4)"b"(1) shall determine the order of benefits; or

4. If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows:

(I) The plan covering the custodial parent;

(II) The plan covering the custodial parent's spouse;

(III) The plan covering the noncustodial parent; and then

(IV) The plan covering the noncustodial parent's spouse.

(3) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits shall be determined, as applicable, under subparagraph 38.15(4)"b"(1) or (2) as if those individuals were parents of the child.

c. Active employee or retired or laid-off employee.

(1) The plan that covers a person as an active employee, that is, an employee who is neither laid off nor retired or as a dependent of an active employee, is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(2) If the other plan does not have the provision stated in subparagraph 38.15(4)"c"(1), and, as a result, the plans

do not agree on the order of benefits, subparagraph 38.15(4)"b"(1) is ignored.

(3) Paragraph 38.15(4)"c" does not apply if the provisions of paragraph 38.15(4)"a" can determine the order of benefits.

d. COBRA or state continuation coverage.

(1) If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state law or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan, and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state law or other federal law is the secondary plan.

(2) If the other plan does not have the provision stated in subparagraph 38.15(4)"d"(1), and if, as a result, the plans do not agree on the order of benefits, subparagraph 38.15(4)"d"(1) is ignored.

(3) Paragraph 38.15(4)"d" does not apply if the provisions of 38.15(4)"a" can determine the order of benefits.

e. Longer or shorter length of coverage.

(1) If the preceding provisions stated in paragraphs 38.15(4)"a" through "d" do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

(2) To determine the length of time during which a person has been covered under a plan, two successive plans shall be treated as one if the covered person was eligible under the second plan within 24 hours after coverage under the first plan ended.

(3) The start of a new plan does not include:

1. A change in the amount or scope of a plan's benefits;
2. A change in the entity that pays, provides or administers the plan's benefits; or
3. A change from one type of plan to another, such as from a single employer plan to a multiple employer plan.

(4) The length of time during which a person is covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date on which the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

f. If none of the preceding provisions stated in paragraphs 38.15(4)"a" through "e" determine the order of benefits, the allowable expenses shall be shared equally between the plans.

191—38.16(509,514) Procedure to be followed by secondary plan to calculate benefits and pay a claim. In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan shall calculate the benefits it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed 100 percent of the total allowable expense for that claim. In addition, the secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

191—38.17(509,514) Notice to covered persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

191—38.18(509,514) Miscellaneous provisions.

38.18(1) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this subrule shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

38.18(2) Complying and noncomplying plans.

a. A plan with order of benefit determination provisions that comply with this division (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in this division (noncomplying plan) on the following basis:

(1) If the complying plan is the primary plan, it shall pay or provide its benefits first;

(2) If the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability; and

(3) If the noncomplying plan does not provide the information needed by the complying plan to determine the complying plan's benefits within a reasonable time after the noncomplying plan is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If, within two years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, the complying plan shall adjust payments accordingly.

b. If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to the covered person or on behalf of the covered person an amount equal to the difference.

c. In no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

38.18(3) COB differs from subrogation. Provisions for COB or subrogation may be included in health care benefits contracts without compelling the inclusion or exclusion of either.

38.18(4) If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plan.

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191—38.19(509,514) Effective date for existing contracts.

38.19(1) A contract that provides health care benefits and that was issued before [insert the effective date of these rules] shall be brought into compliance with this division by the latest of:

a. The next anniversary date or renewal date of the contract; or

b. Twelve months following [insert the effective date of these rules]; or

c. The expiration of any applicable collectively bargained contract pursuant to which it was written.

38.19(2) For the transition period between the adoption of this division and the time frame for which plans are to be in compliance pursuant to subrule 38.19(1), a plan that is subject to the COB requirements in division I shall not be considered a noncomplying plan by a plan subject to the new COB requirements in division II. If there is a conflict between the COB requirements in division I and the new COB requirements in division II, the COB requirements in division I shall apply.

APPENDIX A MODEL COB CONTRACT PROVISIONS

COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one **Plan**. **Plan** is defined below.

The order of benefit determination rules govern the order in which each **Plan** will pay a claim for benefits. The **Plan** that pays first is called the **Primary plan**. The **Primary plan** must pay benefits in accordance with its policy terms without regard to the possibility that another **Plan** may cover some expenses. The **Plan** that pays after the **Primary plan** is the **Secondary plan**. The **Secondary plan** may reduce the benefits it pays so that payment from all **Plans** does not exceed 100% of the total **Allowable expense**.

DEFINITIONS

A. A **Plan** is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

(1) **Plan** includes: group insurance contracts, health maintenance organization (HMO) contracts, closed panel plans or other forms of group or group-type coverage (whether insured or uninsured); medical care components of group long-term care contracts, such as skilled nursing care; medical benefits under group or individual automobile contracts; and Medicare or any other federal governmental plan, as permitted by law.

(2) **Plan** does not include: hospital indemnity coverage or other fixed indemnity coverage; accident-only coverage; specified disease or specified accident coverage; limited benefit health coverage, as defined by state law; school accident-type coverage; benefits for nonmedical components of long-term care policies; Medicare supplement policies; Medicaid policies; or coverage under other federal governmental plans, unless permitted by law.

Each contract for coverage under (1) or (2) is a separate **Plan**. If a **Plan** has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate **Plan**.

B. **This plan** means, in a **COB** provision, the part of the contract providing the health care benefits to which the **COB** provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one **COB** provision to certain benefits, such as dental benefits, coordinating only with similar benefits, and may apply another **COB** provision to coordinate other benefits.

C. The order of benefit determination rules determine whether **This plan** is a **Primary plan** or **Secondary plan** when the person has health care coverage under more than one **Plan**.

When **This plan** is primary, it determines payment for its benefits first before those of any other **Plan** without considering any other **Plan's** benefits. When **This plan** is secondary, it determines its benefits after those of another **Plan** and may reduce the benefits it pays so that all **Plan** benefits do not exceed 100% of the total **Allowable expense**.

D. **Allowable expense** is a health care expense, including deductibles, coinsurance and copayments, that is covered at least in part by any **Plan** covering the person. When a **Plan** provides benefits in the form of services, the reasonable cash value of each service will be considered an **Allowable expense** and a benefit paid. An expense that is not covered by any **Plan** covering the person is not an **Allowable expense**. In addition, any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an **Allowable expense**.

The following are examples of expenses that are not **Allowable expenses**:

(1) The difference between the cost of a semiprivate hospital room and a private hospital room is not an **Allowable expense**, unless one of the **Plans** provides coverage for private hospital room expenses.

(2) If a person is covered by 2 or more **Plans** that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an **Allowable expense**.

(3) If a person is covered by 2 or more **Plans** that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an **Allowable expense**.

(4) If a person is covered by one **Plan** that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology and by another **Plan** that provides its benefits or services on the basis of negotiated fees, the **Primary plan's** payment arrangement shall be the **Allowable expense** for all **Plans**. However, if the provider has contracted with the **Secondary plan** to provide the benefit or service for a specific negotiated fee or payment amount that is different than the **Primary plan's** payment arrangement and if the provider's contract permits, the negotiated fee or payment shall be the **Allowable expense** used by the **Secondary plan** to determine its benefits.

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(5) The amount of any benefit reduction by the **Primary plan** because a covered person has failed to comply with the **Plan** provisions is not an **Allowable expense**. Examples of these types of plan provisions include second surgical opinions, precertification of admissions, and preferred provider arrangements.

E. **Closed panel plan** is a **Plan** that provides health care benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the **Plan**, and that excludes coverage for services provided by other providers, except in cases of emergency or referral by a panel member.

F. **Custodial parent** is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one-half of the calendar year excluding any temporary visitation.

ORDER OF BENEFIT DETERMINATION RULES

When a person is covered by two or more **Plans**, the rules for determining the order of benefit payments are as follows:

A. The **Primary plan** pays or provides its benefits according to its terms of coverage and without regard to the benefits of any other **Plan**.

B. (1) Except as provided in Paragraph (2), a **Plan** that does not contain a coordination of benefits provision that is consistent with this regulation is always primary unless the provisions of both **Plans** state that the complying plan is primary.

(2) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage shall be excess to any other parts of the **Plan** provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a **Closed panel plan** to provide out-of-network benefits.

C. A **Plan** may consider the benefits paid or provided by another **Plan** in calculating payment of its benefits only when it is secondary to that other **Plan**.

D. Each **Plan** determines its order of benefits using the first of the following rules that apply:

(1) Nondependent or Dependent. The **Plan** that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber or retiree is the **Primary plan** and the **Plan** that covers the person as a dependent is the **Secondary plan**. However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the **Plan** covering the person as a dependent; and primary to the **Plan** covering the person as other than a dependent (e.g., a retired employee); then the order of benefits between the two **Plans** is reversed so that the **Plan** covering the person as an employee, member, policyholder, subscriber or retiree is the **Secondary plan** and the other **Plan** is the **Primary plan**.

(2) Dependent Child Covered Under More Than One Plan. Unless there is a court decree stating otherwise, when a dependent child is covered by more than one **Plan** the order of benefits is determined as follows:

(a) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

- The **Plan** of the parent whose birthday falls earlier in the calendar year is the **Primary plan**; or
- If both parents have the same birthday, the **Plan** that has covered the parent the longest is the **Primary plan**.

(b) For a dependent child whose parents are divorced or separated or not living together, whether or not they have ever been married:

(i) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the **Plan** of that parent has actual knowledge of those terms, that **Plan** is primary. This rule applies to plan years commencing after the **Plan** is given notice of the court decree;

(ii) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of Subparagraph (a) above shall determine the order of benefits;

(iii) If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of Subparagraph (a) above shall determine the order of benefits; or

(iv) If there is no court decree allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child is as follows:

- The **Plan** covering the **Custodial parent**;
- The **Plan** covering the spouse of the **Custodial parent**;
- The **Plan** covering the **Noncustodial parent**; and then
- The **Plan** covering the spouse of the **Noncustodial parent**.

(c) For a dependent child covered under more than one **Plan** of individuals who are the parents of the child, the provisions of Subparagraph (a) or (b) above shall determine the order of benefits as if those individuals were the parents of the child.

(3) Active Employee or Retired or Laid-Off Employee. The **Plan** that covers a person as an active employee, that is, an employee who is neither laid off nor retired, is the **Primary plan**. The **Plan** covering that same person as a retired or laid-off employee is the **Secondary plan**. The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

(4) COBRA or State Continuation Coverage. If a person whose coverage is provided pursuant to COBRA or under a right of continuation provided by state or other federal law is covered under another **Plan**, the **Plan** covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the **Primary plan** and the COBRA or state or other federal continuation coverage is the **Secondary plan**. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

(5) Longer or Shorter Length of Coverage. The **Plan** that covered the person as an employee, member, policyholder, subscriber or retiree longer is the **Primary plan** and the **Plan** that covered the person the shorter period of time is the **Secondary plan**.

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(6) If the preceding rules do not determine the order of benefits, the **Allowable expenses** shall be shared equally between the **Plans** meeting the definition of **Plan**. In addition, **This plan** will not pay more than it would have paid had it been the **Primary plan**.

EFFECT ON THE BENEFITS OF THIS PLAN

A. When **This plan** is secondary, it may reduce its benefits so that the total benefits paid or provided by all **Plans** during a plan year are not more than the total **Allowable expenses**. In determining the amount to be paid for any claim, the **Secondary plan** will calculate the benefits it would have paid in the absence of other health care coverage and apply that calculated amount to any **Allowable expense** under its **Plan** that is unpaid by the **Primary plan**. The **Secondary plan** may then reduce its payment by the amount so that, when combined with the amount paid by the **Primary plan**, the total benefits paid or provided by all **Plans** for the claim do not exceed the total **Allowable expense** for that claim. In addition, the **Secondary plan** shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

B. If a covered person is enrolled in two or more **Closed panel plans** and if, for any reason, including the provision of service by a non-panel provider, benefits are not payable by one **Closed panel plan**, **COB** shall not apply between that **Plan** and other **Closed panel plans**.

RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION

Certain facts about health care coverage and services are needed to apply these **COB** rules and to determine benefits payable under **This plan** and other **Plans**. [Organization responsibility for **COB** administration] may get the facts it needs from or give them to other organizations or persons for the purpose of applying these rules and determining benefits payable under **This plan** and other **Plans** covering the person claiming benefits. [Organization responsibility for **COB** administration] need not tell, or get the consent of, any person to do this. Each person claiming benefits under **This plan** must give [Organization responsibility for **COB** administration] any facts it needs to apply those rules and determine benefits payable.

FACILITY OF PAYMENT

A payment made under another **Plan** may include an amount that should have been paid under **This plan**. If it does, [Organization responsibility for **COB** administration] may pay that amount to the organization that made that payment. That amount will then be treated as though it were a benefit paid under **This plan**. [Organization responsibility for **COB** administration] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means the reasonable cash value of the benefits provided in the form of services.

RIGHT OF RECOVERY

If the amount of the payments made by [Organization responsibility for **COB** administration] is more than it should have paid under this **COB** provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid; or any other person or organization that may be responsible for the benefits or services provided for the covered person. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

APPENDIX B CONSUMER EXPLANATORY BOOKLET

COORDINATION OF BENEFITS

IMPORTANT NOTICE

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits your insurers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses. Coordination of benefits does not apply to a non-group (individual) insurance contract and subscriber contract.

Coordination of benefits (COB) is complicated, and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact your state insurance department.

Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim.

Any plan that does not contain your state's COB rules will always be primary.

When This Plan Is Primary

If you or a family member are covered under another plan in addition to this one, we will be primary when:

Your Own Expenses

- The claim is for your own health care expenses, unless you are covered by Medicare and both you and your spouse are retired.

Your Spouse's Expenses

- The claim is for your spouse, who is covered by Medicare, and you are not both retired.

INSURANCE DIVISION[191](cont'd)

Your Child's Expenses

- The claim is for the health care expenses of your child who is covered by this plan and
- You are married and your birthday is earlier in the year than your spouse's or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule";

or

- You are separated or divorced and you have informed us of a court decree that makes you responsible for the child's health care expenses;

or

- There is no court decree, but you have custody of the child.

Other Situations

We will be primary when any other provisions of state or federal law require us to be.

How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits in accordance with the terms of your contract, just as if you had no other health care coverage under any other plan.

How We Pay Claims When We Are Secondary

We will be secondary whenever the rules do not require us to be primary.

How We Pay Claims When We Are Secondary

When we are the secondary plan, we do not pay until after the primary plan has paid its benefits. We will then pay part or all of the allowable expenses left unpaid, as explained below. An "allowable expense" is a health care expense covered by one of the plans, including copayments, coinsurance and deductibles.

- If there is a difference between the amount the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the amount called for in our contract or the amount called for in the contract of the primary plan, whichever is higher. Health maintenance organizations (HMOs) and preferred provider organizations (PPOs) usually have contracts with their providers.
- We will determine our payment by subtracting the amount the primary plan paid from the amount we would have paid if we had been primary. We may reduce our payment by any amount so that, when combined with the amount paid by the primary plan, the total benefits paid do not exceed the total allowable expense for your claim. We will credit any amount we would have paid in the absence of your other health care coverage toward our own plan deductible.
- If the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we may pay for those expenses.
- We will not pay an amount the primary plan did not cover because you did not follow its rules and procedures. For example, if your plan has reduced its benefit because you did not obtain precertification, as required by that plan, we will not pay the amount of the reduction, because it is not an allowable expense.

Questions About Coordination of Benefits?

Contact Your State Insurance Department

These rules are intended to implement Iowa Code chapters 509 and 514.

ARC 4566B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 89A.3(1) and 89A.13(6), the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 75, "Fees," Iowa Administrative Code.

The proposed amendment updates fees charged for the issuance of alteration permits. The amendment is proposed to reflect economic changes since this rule was last amended and to provide adequate funding for enforcement of Iowa Code chapter 89A.

This amendment will not necessitate combined expenditures exceeding $100,000 by all political subdivisions or agencies and entities that contract with political subdivisions to provide services.

This amendment does not contain a waiver provision because variances may be sought through the Elevator Safety Board.

If requested no later than November 1, 2005, by at least 25 interested persons, a governmental agency, or a group representing at least 25 interested persons, a public hearing will be held November 3, 2005, at 8:30 a.m. in the Stanley Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment.

The facility for oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

The public hearing will be canceled without further notice if no request for a hearing is received.

Written data, views, arguments or comments to be considered in adoption shall be submitted no later than November 1, 2005, to Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

The Division of Labor will issue a regulatory analysis as provided by Iowa Code section 17A.4A if a written request is submitted no later than November 14, 2005, to Division of

LABOR SERVICES DIVISION[875](cont'd)

Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons who each qualify as a small business, or an organization representing at least 25 small businesses.

This amendment is intended to implement Iowa Code chapter 89A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 875—75.2(89A) as follows:

875—75.2(89A) Alterations. Alteration inspection and permit fees shall be ~~as follows: up to and including $20,000 of valuation—$90; over $20,000 of valuation—$90 plus $1 for each $1,000 or fraction thereof over $20,000 of valuation~~ *$200 for alterations up to and including 25 percent; $400 for alterations of 26 percent up to and including 50 percent; and the fee schedule for new installations shall apply for alterations over 50 percent. The alterations table in rule 875—76.7(89A) shall be used to determine the change percentage*. These fees include initial inspection and the alteration permit fees. If the alteration does not comply at the time of an acceptance inspection and has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee of $200 for each additional inspection. The alteration inspection and permit fees shall be remitted to the division of labor services when the application is filed.

Consultative inspections may be performed at the discretion of the labor commissioner for a fee of $100 per hour, including travel time, with a minimum charge of $200.

ARC 4552B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 34, "Fees," Iowa Administrative Code.

These proposed amendments rescind rule 645—34.1(147,154D) and adopt a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and provide other services for licensees such as online renewals. The Board prenoticed these amendments to provide licensees and the public an opportunity to comment on the proposed amendments. The Board did not receive any comments during this prenotice period. In addition, the amendments propose a new paragraph "c" in subrule 31.10(3) to allow licensees who have recently renewed their licenses to wait until the next renewal cycle to renew.

Any interested person may make written comments on the proposed amendments no later than November 3, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on November 3, 2005, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt **new** paragraph **"c"** in subrule **31.10(3)** as follows:

c. An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

ITEM 2. Rescind rule 645—34.1(147,154D) and adopt the following **new** rule in lieu thereof:

645—34.1(147,154D) License fees. All fees are nonrefundable.

34.1(1) Licensure fee for license to practice marital and family therapy or mental health counseling is $120.

34.1(2) Biennial license renewal fee for each biennium is $120.

34.1(3) Late fee for failure to renew before expiration is $60.

34.1(4) Reactivation fee is $180.

34.1(5) Duplicate or reissued license certificate or wallet card fee is $20.

34.1(6) Verification of license fee is $20.

34.1(7) Returned check fee is $25.

34.1(8) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 154D and 272C.

ARC 4556B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners hereby gives Notice of Intended Action to amend Chapter 81, "Licensure of Dietitians," Chapter 82, "Continuing Education for Dietitians," and Chapter 84, "Fees," Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These proposed amendments rescind rule 645—84.1(147, 152A) and adopt a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and provide other services for licensees such as online renewals. The Board prenoticed these amendments to provide licensees and the public an opportunity to comment on the proposed amendments. The Board did not receive any comments during this prenotice period.

In addition, the amendments propose changes to subrule 81.9(2) to allow a licensee who recently reactivated the license prior to the start of a new renewal cycle to renew at the next renewal cycle, remove references to Board approval in the continuing education chapter, remove the reference to approval by the Commission on Dietetic Registration of the American Dietetic Association, rescind subparagraph (5) in paragraph 82.3(2)"d" regarding other professional education activities, and add in subrule 82.3(2) the requirement to provide a narrative describing other professional development activities.

Any interested person may make written comments on the proposed amendments no later than November 3, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on November 3, 2005, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152A and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt **new** subrule 81.9(9) as follows:

81.9(9) Renewal of a reactivated license. A licensee who reactivates the license in accordance with rule 645—81.15(17A,147,272C) will not be required to renew the license until the next renewal two years later if the license is reactivated within six months prior to the license renewal date.

ITEM 2. Amend rule **645—82.1(152A)** by amending the following definition:

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules~~, which has received advance approval by the board pursuant to these rules~~.

ITEM 3. Amend subrule **82.3(2)**, paragraphs **"a"** and **"b,"** as follows:

a. Continuing education hours of credit may be obtained by completing programs/activities that reflect the educational needs of the dietitian and the nutritional needs of the consumer. ~~Programs/activities may be offered within the state of Iowa and shall have prior approval by the board. If the program/activity is offered outside the state of Iowa, the hours can be accrued if the session meets the criteria in the rules and is approved by the Commission on Dietetic Registration of the American Dietetic Association.~~ Continuing education programs/activities that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth shall be ~~approved~~ *accepted* for continuing education.

b. The licensee shall participate in other types of activities identified in the individual licensee's professional development portfolio for Commission on Dietetic Registration (CDR) certification. Programs or activities ~~not otherwise prior approved by the board~~ shall be subject to approval in the event of an audit.

ITEM 4. Amend paragraph **82.3(2)"d,"** subparagraphs **(3)**, **(4)**, **(5)** and **(6)**, as follows:

(3) Poster sessions. Continuing education credit may be obtained for attending juried poster sessions at national meetings that meet the criteria for appropriate subject matter as required in these rules. One hour of continuing education credit is allowed for each 12 posters reviewed not to exceed ~~6~~ *six* hours in a continuing education biennium. ~~Credit for state meeting poster sessions must have prior approval from the board.~~

(4) Presenters. Presenters may receive continuing education credit. Presentations to the lay public shall not receive credit for continuing education. For each ~~one~~ *50-minute* hour of presentation, two hours of credit for continuing education shall be earned. Presenters of poster sessions at national professional meetings shall receive a maximum of two hours of credit per topic. A copy of the abstract or manuscript and documentation of the peer review process must be included in the licensee's documentation list.

~~(5) Other professional education activities. Unless otherwise addressed in these rules, activities designed to address learning needs documented in the individual licensee's CDR professional development portfolio will be reviewed based on the following:~~

~~1. A narrative to explain how the activity relates to the individual learning plan.~~

~~2. A summary to explain how the activity will be evaluated to ensure achievement of the planned outcomes.~~

(~~6~~ *5*) *Staff development training.* Staff development training ~~shall meet the criteria herein and be subject to board approval~~ *that meets the criteria in 645—subrule 82.3(2) shall be credited on the basis of the defined hour of continuing education stated in these rules*.

ITEM 5. Adopt **new** paragraph **82.4(2)"d"** as follows:

d. For other professional development activities identified in the licensee's CDR portfolio, the licensee shall provide a brief narrative of the learning plan objective, the completed activity and the hours accrued.

ITEM 6. Rescind rule 645—84.1(147,152A) and adopt the following **new** rule in lieu thereof:

645—84.1(147,152A) License fees. All fees are nonrefundable.

84.1(1) Licensure fee for license to practice dietetics, licensure by endorsement, or licensure by reciprocity is $120.

84.1(2) Biennial license renewal fee for each biennium is $120.

84.1(3) Late fee for failure to renew before expiration is $60.

84.1(4) Reactivation fee is $180.

84.1(5) Duplicate or reissued license certificate or wallet card fee is $20.

84.1(6) Verification of license fee is $20.

84.1(7) Returned check fee is $25.

84.1(8) Disciplinary hearing fee is a maximum of $75.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152A and 272C.

ARC 4560B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby gives Notice of Intended Action to amend Chapter 351, "Licensure of Athletic Trainers," and Chapter 354, "Fees," Iowa Administrative Code.

These amendments propose changes to allow a licensee who renews within six months of a new licensing cycle to wait until the subsequent renewal period, to require proof of licensure from every state in which an applicant was previously licensed, and to adopt a new fees rule that increases fees to fund changes to an antiquated software system and provide other services for licensees such as as online renewals. The Board prenoticed the fees rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during this prenotice period.

Any interested person may make written comments on the proposed amendments no later than November 3, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on November 3, 2005, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152D and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 351.9(2) as follows:

351.9(2) An individual who was issued ~~an initial~~ *a* license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

ITEM 2. Rescind rule 645—354.1(147,152D) and adopt the following **new** rule in lieu thereof:

645—354.1(147,152D) License fees. All fees are nonrefundable.

354.1(1) Licensure fee for license to practice athletic training is $120.

354.1(2) Temporary licensure fee for license to practice athletic training is $120.

354.1(3) Biennial license renewal fee for each biennium is $120.

354.1(4) Late fee for failure to renew before expiration is $60.

354.1(5) Reactivation fee is $180.

354.1(6) Duplicate or reissued license certificate or wallet card fee is $20.

354.1(7) Verification of license fee is $20.

354.1(8) Returned check fee is $25.

354.1(9) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

ARC 4565B

REGENTS BOARD[681]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 3, "Personnel Administration," Iowa Administrative Code.

This amendment will allow nonorganized (confidential and supervisory) employees in the Regent Merit System to carry over 40 hours of emergency care leave. This change was negotiated for AFSCME-covered staff in the Regent Merit System effective July 1, 2005. The amendment will allow all employees of the Regent Merit System to have the same benefit.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested person may make written comments or suggestions on or before Tuesday, November 1, 2005. Such written materials should be directed to Marcia Brunson, Policy and Operations Officer, Board of Regents, 11260 Aurora, Urbandale, Iowa 50322. Comments may also be sent by E-mail to mbruns@iastate.edu or submitted by fax to (515) 281-6420.

This amendment is intended to implement Iowa Code chapter 8A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 681—3.148(8A) as follows:

681—3.148(8A) Emergency and funeral leave. An employing department will, when satisfied by evidence presented, grant an employee time off with pay:

1. Not to exceed three days for each occurrence in the case of death in the employee's immediate family;

REGENTS BOARD[681](cont'd)

2. Not to exceed one day for each occurrence for service as a pallbearer at the funeral of a person not a member of the employee's immediate family; and

3. Not to exceed five days a year for the temporary emergency care of ill or injured members of the employee's immediate family for the time necessary to permit the employee to make other arrangements. *Employees may carry over up to 40 hours of unused emergency care leave to the next year, for a maximum utilization of 80 hours in the next year.*

All such time off will be charged to the employee's sick leave and will not be granted in excess of the employee's accrued leave. For the purpose of this rule, immediate family is defined as the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse, and other persons who are members of the employee's household.

ARC 4576B

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b.*"

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421B.11, 424.1, 452A.59, 452A.76, 453A.25 and 453A.49, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 37, "Underground Storage Tank Rules Incorporated by Reference," Chapter 67, "Administration," Chapter 68, "Motor Fuel and Undyed Special Fuel," Chapter 69, "Liquefied Petroleum Gas—Compressed Natural Gas," Chapter 81, "Administration," Chapter 83, "Tobacco Tax," Chapter 84, "Unfair Cigarette Sales," and Chapter 85, "Tobacco Master Settlement Agreement," Iowa Administrative Code.

These rules are proposed primarily to implement legislation enacted in 2005 Iowa Acts, Senate File 413, and House Files 216, 339 and 868.

Item 1 amends rule 701—37.1(424) to delete the words "and finance" from "department of revenue and finance."

Items 2 and 3 amend rule 701—67.1(452A) to exclude methanol from the definitions of "motor fuel" and "special fuel" unless it is blended with other fuels for use in motor vehicles or aircraft. Item 2 also amends rule 67.1(452A) by adding a definition of "E-85 gasoline." Item 3 amends the implementation clause for this rule.

Items 4 and 5 amend rule 701—67.6(452A) to give the Director the authority to require that all reports and returns due under Iowa Code chapter 452A be filed by electronic transmission. The rule is also amended to require that all licensees must file using electronic transmission for returns that are due after April 30, 2006. In addition, all suppliers, restricted suppliers, importers, and blenders that report more than 100,000 gallons of product on their returns must file schedules using electronic transmission. Item 5 amends the implementation clause for this rule.

Item 6 amends subrule 68.2(1) to reflect the change in the motor fuel tax rate from 20.5¢ to 20.7¢ per gallon for the period July 1, 2005, through June 30, 2006, and to add a rate for E-85 gasoline beginning January 1, 2006.

Item 7 adopts new subrule 68.2(4) to explain the procedure the department will use to determine if the E-85 tax rate of 17¢ per gallon will remain in effect for the following year. Item 7 also adopts new subrule 68.2(5) to explain the procedures for implementing the inventory tax that was enacted several years ago and to state that the tax does not apply if the increase in the rate of tax is not in excess of one-half cent per gallon. Item 8 amends the implementation clause for this rule.

Item 9 amends subrule 68.4(1) to clarify that the tax rates of 20¢ per gallon for gasoline and 19¢ per gallon for ethanol blended gasoline used in the examples may not be the actual tax rates.

Item 10 amends subrule 68.8(2) to provide an exemption from tax for fuel used by a company operating a taxicab service under contract with an Iowa urban transit system.

Item 11 amends the implementation clause for rule 701—68.8(452A).

Item 12 amends rule 701—69.2(452A) authorizing the Director to require that returns filed by licensed liquefied petroleum gas and compressed natural gas dealers and users be filed by electronic transmission.

Item 13 implements the tobacco tax retail permit legislation enacted in 2005 Iowa Acts, House File 339, by adding the following new rules:

- 83.12(81GA,HF339) explains who must obtain a permit.
- 83.13(81GA,HF339) states who issues the permits and the cost of the permits.
- 83.14(81GA,HF339) shows the amount of refund to be given if a permit is surrendered prior to expiration.
- 83.15(81GA,HF339) lists the information that is to be included in the application for a permit.
- 83.16(81GA,HF339) requires that the permit holder maintain records required by the director.
- 83.17(81GA,HF339) imposes penalties for violations of the statutes and rules.

Item 14 changes the name of the department from the "department of revenue and finance" to the "department of revenue" in several rules.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 14, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before No-

vember 1, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who wish to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 2, 2005.

These amendments are intended to implement Iowa Code chapter 424 as amended by 2005 Iowa Acts, Senate File 413; chapter 452A as amended by 2005 Iowa Acts, House Files 216 and 868; and chapter 453A as amended by 2005 Iowa Acts, House File 339.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 701—37.1(424) as follows:

701—37.1(424) Rules incorporated. Rules *in* 591—Chapters 5 and 6 of Iowa comprehensive petroleum underground storage tank fund board (UST Board) are incorporated with this reference into the rules of the department of revenue ~~and finance~~.

This rule is intended to implement Iowa Code chapter 424.

ITEM 2. Amend rule **701—67.1(452A)** as follows:

Amend the following definitions:

"Motor fuel" does not include special fuel and does not include liquefied gases which would not exist as liquids at a temperature of 60° F and a pressure of 14 7/10 pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph "2," in which event the resulting product shall be deemed to be motor fuel. *"Motor fuel" also does not include methanol unless blended with other motor fuels for use in an aircraft or for propelling motor vehicles.*

"Special fuel" means fuel oils, kerosene and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel. Kerosene *and methanol* shall not be considered to be ~~a~~ special ~~fuel~~ *fuels*, unless the kerosene *or methanol* is blended with other special fuels for use in a motor vehicle with a diesel engine.

Adopt the following **new** definition in alphabetical order:

"E-85 gasoline" means gasoline that contains at least 85 percent denatured alcohol by volume from the first day of April until the last day of October or 70 percent denatured alcohol from the first day of November until the last day of March.

ITEM 3. Amend rule **701—67.1(452A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 452A.2 as amended by ~~2003~~ *2005* Iowa Acts, Senate File ~~458~~ *413, and section 452A.3 as amended by 2005 Iowa Acts, House File 868*.

ITEM 4. Amend rule 701—67.6(452A), introductory paragraph, as follows:

701—67.6(452A) Timely filing of returns, reports, remittances, ~~or application~~ *applications, or* requests. The returns, reports, remittances, applications, or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any return that is not signed and any return which does not contain substantially all of the pertinent information is not considered "filed" until such time as the taxpayer signs or supplies the information to the department. Miller Oil Company v. Abrahamson, 252 Iowa 1058, 109 N.W.2d 610 (1961), Severs v. Abrahamson, 255 Iowa 979, 124 N.W.2d 150 (1963). The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. *The director may require by rule that reports and returns be filed by electronic transmission. Effective for returns due after April 30, 2006, all licensees must file returns by electronic transmission. All suppliers, restricted suppliers, importers, and blenders with at least 100,000 gallons of product on their return must also file the schedules which support the return by electronic transmission.*

ITEM 5. Amend rule **701—67.6(452A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section *452A.8 as amended by 2005 Iowa Acts, Senate File 413, and section* 452A.61.

ITEM 6. Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢	per gallon (for July 1, 2003, through June 30, 2004)
	20.5¢	*per gallon (for July 1, 2004, through June 30, 2005)*
	20.7¢	*per gallon (for July 1, 2005, through June 30, 2006)*
LPG	20¢	per gallon
Ethanol-blended gasoline	19¢	per gallon (for July 1, 2003, through June 30, ~~2004~~ *2006*)
E-85 gasoline	*17¢*	*per gallon beginning January 1, 2006*
Aviation gasoline	8¢	per gallon
Special fuel (diesel)	~~22½~~ *22.5¢*	per gallon
Special fuel (aircraft)	3¢	per gallon
CNG	16¢	per 100 cu. ft.

ITEM 7. Amend rule 701—68.2(452A) by adding the following **new** subrules:

68.2(4) The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or 1A. If the difference is less than $25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is $25,000 or more, the

tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or 1A.

Beginning January 1, 2006, retailers of E-85 gasoline must file a report with the department by the last day of the month of each calendar quarter for each retail location showing the number of invoiced gallons of E-85 gasoline sold by the retailer in Iowa during the preceding calendar quarter. The report must also include a listing of the vendors providing E-85 gasoline to the retailer and the number of gallons received from each vendor. If the retailer blends E-85 gasoline, the retailer must show the number of gallons of motor fuel (including both gasoline and alcohol) purchased and blended. The report must be signed under penalty for false certificate.

68.2(5) Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

ITEM 8. Amend rule **701—68.2(452A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 452A.3 as amended by ~~2002 Iowa Acts, Senate File 2305, and~~ *2005 Iowa Acts, House File 868,* ~~Iowa Code~~ section 452A.8, *and section 452A.85 as amended by 2005 Iowa Acts, Senate File 413*.

ITEM 9. Amend subrule 68.4(1), introductory paragraph, as follows:

68.4(1) Blenders who own the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier (20¢ per gallon). The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. *For purposes of this subrule and subrules 68.4(2) and 68.4(3), the tax rate for gasoline is presumed to be 20¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 19¢ per gallon. The actual tax rate for the appropriate period is shown in subrule 68.2(1).*

ITEM 10. Amend subrule 68.8(2) as follows:

68.8(2) Transit systems. Fuel sold to an Iowa urban transit system as defined in 701—67.1(452A) *or a company operating a taxicab service under contract with an Iowa urban transit system* which is used for a purpose specified in Iowa Code section 452A.57(6) and fuel sold to a regional transit system as defined in 701—67.1(452A) which is used for a purpose specified in Iowa Code section 452A.57(11).

ITEM 11. Amend rule **701—68.8(452A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 452A.17 as amended by ~~2003~~ *2005* Iowa Acts, House File ~~344~~ *216*, and Iowa Code section 452A.71.

ITEM 12. Amend rule **701—69.2(452A)**, second unnumbered paragraph and the implementation clause, as follows:

The return and tax are due no later than the last day of the month following the month the L.P.G. was placed in a vehicle or C.N.G. was placed into compressing equipment. The tax must be remitted by means of electronic funds transfer, unless the licensee can show that this method of payment would cause undue hardship on the licensee and must be rounded to the nearest whole number. *The return must be remitted by means of electronic transmission.*

This rule is intended to implement Iowa Code section 452A.8 *as amended by 2005 Iowa Acts, Senate File 413.*

ITEM 13. Amend 701—Chapter 83 by adding the following **new** rules:

701—83.12(81GA,HF339) Retail permits required. For administrative purposes, the retail permits will be called "cigarette/tobacco retail permits." A person shall not engage in the business of a retailer of tobacco products without first having received a permit as a cigarette/tobacco retailer. A cigarette/tobacco retail permit shall be obtained for each place of business owned or operated by a retailer. The holder of a cigarette/tobacco retail permit is not required to obtain a tobacco retail permit. The retailer may sell cigarettes only, tobacco products only, or both cigarettes and tobacco products. However, if the cigarette/tobacco permit is suspended, revoked, or expired, the cigarette retailer shall not sell any cigarettes or tobacco products during the time the permit is suspended, revoked, or expired.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.13(81GA,HF339) Permit issuance fee. Retail permits are issued by the following authorities at the following prices:

83.13(1) Outside any city, by the county board of supervisors, at an annual cost of $50.

83.13(2) In cities of less than 15,000 population, by the city council, at an annual cost of $75.

83.13(3) In cities of 15,000 or more population, by the city council, at an annual cost of $100.

83.13(4) If any permit is granted during the month of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the month of January, February, or March, one-half of the maximum schedule; and if granted during the month of April, May, or June, one-fourth of the maximum schedule.

83.13(5) The retail permit expires on June 30 of each year. The city or county must submit a copy of any retail permit issued and the application for the permit to the department of public health within 30 days of issuance.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.14(81GA,HF339) Refunds of permit fee.

83.14(1) An unrevoked permit for which the retailer paid the full annual fee may be surrendered during the first nine months of the year to the office issuing it, and the city or

county granting the permit shall make refunds to the retailer as follows:

a. Three-fourths of the annual fee if the surrender is made during July, August, or September.

b. One-half of the annual fee if the surrender is made during October, November, or December.

c. One-fourth of the annual fee if the surrender is made during January, February, or March.

83.14(2) An unrevoked permit for which the retailer has paid three-fourths of a full annual fee may be surrendered during the first six months of the period covered by the payment, and the city or county shall make refunds to the retailer as follows:

a. A sum equal to one-half of the annual fee if the surrender is made during October, November, or December.

b. A sum equal to one-fourth of the annual fee if the surrender is made during January, February, or March.

83.14(3) An unrevoked permit for which the retailer has paid one-half of a full annual fee may be surrendered during the first three months of the period covered by the payment, and the city or county shall refund to the retailer a sum equal to one-fourth of the annual fee.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.15(81GA,HF339) Application for permit. Retailer permits shall be issued only upon application, accompanied by the applicable fee, and made upon forms furnished by the department. The forms shall specify:

83.15(1) The manner under which the retailer transacts or intends to transact business as a retailer.

83.15(2) The principal office, residence, and place of business for which the permit is to apply.

83.15(3) If the applicant is not an individual, the principal officers or members of the applicant, not to exceed three, and their addresses.

83.15(4) Such other information as the director shall require.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.16(81GA,HF339) Records and reports.

83.16(1) The director shall prescribe the forms necessary for the efficient administration of 2005 Iowa Acts, House File 339, section 4, and may require uniform books and records to be used and kept by each retailer or other person as deemed necessary for a period of five years.

83.16(2) Every retailer shall, when requested by the department, make additional reports as the department deems necessary and proper and shall, at the request of the department, furnish full and complete information pertaining to any transaction of the retailer involving the purchase or sale or use of tobacco products.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.17(81GA,HF339) Penalties. The permit suspension and revocation provisions and the civil penalties established in Iowa Code section 453A.22 shall apply to tobacco retailers.

This rule is intended to implement 2005 Iowa Acts, House File 339.

ITEM 14. Amend the following rules by deleting the words "and finance" from the phrase "department of revenue and finance": **701—81.1(453A)**, definitions of "bank" and "department"; **701—84.2(421B)**, first unnumbered paragraph; **701—85.1(453C)**; **701—85.3(453C)**; and **701—85.6(453C)**.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2005 Iowa Code sections 422.68(1) and 423.42(1), the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 211, "Definitions," and to adopt new Chapter 212, "Elements Included in and Excluded from a Taxable Sale and Sales Price," Chapter 213, "Miscellaneous Taxable Sales," Chapter 214, "Miscellaneous Nontaxable Transactions," Chapter 225, "Resale and Processing Exemptions Primarily of Benefit to Retailers," and Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

The proposed new chapters are intended to implement 2005 Iowa Code chapter 423, otherwise known as the Streamlined Sales and Use Tax Act. The newly drafted rules are intended to accomplish three things: (1) to explain the changes to Iowa sales and use tax law made by the Streamlined Sales and Use Tax Act; (2) to preserve the existing interpretation of portions of Iowa sales and use tax law which the Streamlined Sales and Use Tax Act does not change; and (3) to exclude from the new rules as many references as possible to sales and use tax law as it existed prior to July 1, 2004, the effective date of the Streamlined Sales and Use Tax Act. Additionally, rule 701—230.5(423) is intended to correct an inaccurate definition of the phrase "inert gas." Proposed Chapter 230 does not yet include the rule which will become the successor to rule 701—18.58(422,423) and will address exempt sales of computers, industrial machinery and equipment, and fuel and electricity. That rule will be proposed in a separate Notice of Intended Action.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 14, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

REVENUE DEPARTMENT[701](cont'd)

Any interested person may make written suggestions or comments on these proposed amendments on or before November 1, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 2, 2005.

These amendments are intended to implement 2005 Iowa Code chapter 423.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **701—211.1(423)** by adding the following **new** definition in alphabetical order:

"Retailer's price" means the total amount of consideration, including cash, credit, property, and services, valued in money, which a retailer states must be paid before the personal property or services offered by the retailer are sold or furnished, without deduction for one or more of the items mentioned in paragraph "b" of the definition of "sales price."

ITEM 2. Adopt the following **new** chapters:

CHAPTER 212
ELEMENTS INCLUDED IN AND EXCLUDED FROM A TAXABLE SALE AND SALES PRICE

Rules in this chapter include cross references to provisions in 701—Chapter 26 that were applicable prior to July 1, 2004.

701—212.1(423) Tax not to be included in price. When a retailer prices an article for retail sale and displays or advertises the same to the public with that price marked, the price so marked or advertised shall include only the sales price of such article unless it is stated on the price tag that the price includes tax.

EXAMPLE. The advertised or marked price is $1. When a sale is made, the purchaser pays or agrees to pay $1.05, which represents the purchase price plus tax, which, when added, becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

"This dress—$10 plus tax"; "This dress—$10 plus 50 cents tax"; or "This dress—$10.50 including tax".

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public that the price "includes tax," the retailer will be allowed to determine sales price by dividing the total of such retailer's price which includes tax by the applicable percentage. For example, a retailer in a jurisdiction that has the state sales tax plus a 1 percent local option tax would use a factor of 106 percent.

However, where an invoice is given to the purchaser as a part of the sale, either the invoice must show the tax separately from the retailer's price or it must be stated on each invoice that tax is included in the retailer's price. If the invoice states "tax included," the seller may determine sales price by the applicable percent method described above. It shall be the responsibility of the retailer that uses or has used the applicable percent method for reporting to provide proof that the retailer has complied with the method of advertising or displaying the retailer's price, as described above.

This rule is intended to implement Iowa Code sections 423.14 and 423.24.

701—212.2(423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash sales price. However, if finance charges are not separately stated and a sale is made for a lump sum amount, the tax is due on the total retailer's price.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. State ex rel. Turner v. Younker Bros., Inc., 210 N.W.2d 550 (Iowa 1973); Road Machinery Supplies of Minneapolis, Inc. v. The Commissioner of Revenue, Minnesota Tax Court of Appeals, 1977, 2 Minn. CCH State Tax Reporter II 200-835, 1977 WL 963 (Minn. Tax.). See rule 701—213.3(423) relating to conditional sales contracts.

This rule is intended to implement Iowa Code section 423.1(47)"b"(2).

701—212.3(423) Retailers' discounts, trade discounts, rebates and coupons.

212.3(1) Retailers' discounts. A retailer's discount reduces the retailer's price of a property or service with the remainder being the actual sales price of the goods charged in the account. The purchaser entitled to the discount will never owe the retailer's price as a debt, the debt being the sales price after the agreed discount has been deducted. The word "discount" means "to buy at a reduction." Benner Tea Company v. Iowa State Tax Commission, 252 Iowa 843, 109 N.W.2d 39 (1961).

Any discount a retailer allows that reduces a retailer's price to a sales price is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser but bills and collects tax on the retailer's price rather than on the sales price. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude the discount from the sales price when collecting and reporting tax.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing, the gross charge having become the taxable sales price by virtue of the customer's failure to take the action which allows the discount to be taken.

212.3(2) Rebates. A "rebate" is a return of part of an amount paid for a product. Manufacturers' rebates are not discounts and cannot be used to reduce the sales price received from a sale or to reduce the purchase price of a product. This subrule applies even though the rebate is used by the retailer to reduce the retailer's price to a sales price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser. See 1972 O.A.G. 332.

212.3(3) Coupons. Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the retailer's price of the product. Coupons issued by

the retailer which actually reduce the price of the product to the purchaser are treated as a discount as provided in subrule 212.3(1). Saxon-Western Corporation v. Mahin, 369 N.E.2d 1185 (Ill. 1979).

EXAMPLE 1. C acquires a 30¢ off coupon issued by manufacturer of A-B Bandaids for A-B Bandaids. The coupon can be redeemed at a store which sells the product. C goes to store D and purchases a box of A-B Bandaids which shows a price of $1.50. C pays $1.20 plus the 30¢ coupon. D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the $1.50 because D's total sales price is $1.50. The coupon is not used as a discount in this situation.

EXAMPLE 2. E offers a two-for-the-price-of-one coupon for its super hamburger. Each hamburger normally sells for $2. The coupon can only be redeemed at E's retail store. F acquires the coupon and redeems it at E's store. The purchase price for F was $2 for both hamburgers. The tax is due on the $2 because this amount is the sales price for E, even though the value of the two hamburgers would normally be $4. In this situation, the sales price for the two hamburgers is $2.

212.3(4) Trade discounts. A "trade discount" is a discount from a seller's list price which is offered to a class or category of customer, e.g., retailers or wholesalers. Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of manufacturer's, distributor's, or wholesaler's product (e.g., cigarettes) or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product are not to be included in any taxable sales price. This subrule does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers; see subrule 212.3(3).

This rule is intended to implement Iowa Code section 423.1(47)"b"(1).

701—212.4(423) Excise tax included in and excluded from sales price.

212.4(1) An excise tax which is not an Iowa sales or use tax may be excluded from the sales price or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sales price on which the Iowa sales tax is imposed or upon the purchase price which measures the amount of taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity which precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is also responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. See Gurley v. Rhoden, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) for a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the excise tax is specifically stated, and the amount of the excise tax is separately set out on the invoice, bill of sale, or another document which embodies a record of the sale.

EXAMPLE 1. The federal government imposes an excise tax upon the act of manufacturing tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs "b" and "c" above, it is not excludable because it does not meet the requirements of paragraph "a." The tax is not imposed upon the act of selling but upon the prior act of manufacturing. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2. The federal government imposes an excise tax of 4 percent on a retailer's sales price from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser, and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer that has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser; and the tax would not meet the requirements of paragraph "b" above.

212.4(2) The following federal excise taxes are to be included in the sales price upon which Iowa sales tax is to be paid for purposes of collecting Iowa sales tax:

a. The federal gallonage taxes imposed by 26 U.S.C. Sections 5001, 5041, and 5051 on distilled spirits, wines, and beer.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, cigarette papers and tubes, smokeless tobacco, and pipe tobacco.

c. The federal tax imposed under 26 U.S.C. Section 4081 on gasoline.

d. The federal tax imposed by 26 U.S.C. Section 4071 which expires October 1, 2005, on tires.

212.4(3) The following excise taxes are excluded from the amount of the sales price:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies; truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code section 423.1(47)"b"(3).

701—212.5(423) Trade-ins.

212.5(1) Trade-ins. When tangible personal property is traded toward the purchase price of other tangible personal property, the sales price shall be only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

a. The tangible personal property is traded to a retailer, and the property traded is the type normally sold in the regular course of the retailer's business; and

b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

c. The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

EXAMPLE 1. A owns a car valued at $5,000. A trades his used car to XY car dealer for a used car valued at $12,000. XY car dealer normally sells used cars. Use tax would be due

on the $7,000 in money which A paid to XY car dealer, as both conditions "a" and "b" have been met.

EXAMPLE 2. John Doe has a pickup truck with a value of $2,000. John wants a boat, so he offers to trade his $2,000 pickup to ABC boat dealer for the purchase of a boat valued at $5,000. ABC boat dealer is a new and used boat dealer. ABC boat dealer agrees to accept the $2,000 pickup and $3,000 cash in trade for the boat. In this example, the tax would be computed on $5,000. The trade-in provision would not apply because condition "a" has not been met. The property traded is not the type of property normally sold by ABC boat dealer in the regular course of the boat dealer's business.

EXAMPLE 3. ABC Corporation trades 500 bushels of corn and $500 cash to the local cooperative elevator for the purchase of various hand tools. In its regular course of business, the local cooperative elevator sells grain for processing into bread. The trade-in provision in this example would not apply because condition "b" has not been met. When ultimately sold by the cooperative elevator, the grain traded toward the purchase price of the hand tools is sold for processing and not at retail.

EXAMPLE 4. Hometown Appliance store is in the business of selling stoves, refrigerators, and other various appliances in Iowa. Hometown Appliance has a refrigerator valued at $650. Customer A wishes to trade a used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept A's used refrigerator at a value of $150 toward the purchase price of the new refrigerator. A pays Hometown Appliance $500 in cash. The trade-in provision applies as both conditions "a" and "b" have been met, and tax would be due on the $500.

Several months later, Hometown Appliance sells the used refrigerator it received from customer A to the local school district, which is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable because both conditions "a" and "b" were met. The sale is "at retail," even if the sales price is exempt from tax.

EXAMPLE 5. ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is $80. ABC Auto Supply allows a $20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC Auto Supply accepts the unusable generator, it knows that the generator will not be sold at retail; however, ABC Auto Supply also knows that the generator will be sold to XYZ Company, which is in the business of rebuilding generators by using existing parts plus new parts. In this example, the trade-in provision would apply since conditions "a" and "c" have been met.

212.5(2) All the provisions of subrule 212.5(1) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded among persons who are not retailers of vehicles subject to registration, the conditions set forth in 212.5(1) need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the value of the vehicle subject to registration traded.

This rule applies only when a vehicle is traded for tangible personal property, regardless of whether the transaction is between a retailer and a nonretailer or between two nonretailers. The vehicle traded in must be owned by the person(s) trading in the vehicle. It is presumed that the name or names indicated on the title of the vehicle dictate ownership of the vehicle as set forth in Iowa Code chapter 321.

EXAMPLE 1. John Doe has an automobile with a value of $2,000. John and his neighbor Bill Jones, who has an automobile valued at $3,500, decide to trade automobiles. John pays Bill $1,500 cash. Vehicles subject to registration are subject to use tax, which is payable to the county treasurer at the time of registration. In this example, John would owe use tax on $1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE 2. Joe has a Ford automobile with a value of $5,000. Joe and his friend Jim, who has a Chevrolet automobile also valued at $5,000, decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile, with no money changing hands. In this example, there is no tax due on either automobile because there is no exchange of money.

212.5(3) Trade for services. The trade-in provisions referenced in Iowa Code section 423.1(47)"a"(7) and found in Iowa Code section 423.3(59) do not apply to taxable enumerated services. When taxable enumerated services are traded, the sales price would be determined based on the value of the service or other consideration.

EXAMPLE. A and B agree that A will purchase a car which B now owns. The two parties agree on a purchase price of $9,000. In return for transfer of title from B, A agrees to pay B $7,000 in cash and to paint B's house with paint provided by B. A and B agree that that the value of B's house painting services is $2,000. House painting is a taxable enumerated service; reference rule 701—26.34(422). Since the trade-in provisions are not applicable to the value of taxable enumerated services, the purchase price of the car is $9,000 and not $7,000.

212.5(4) Three-way trade-in transactions. In a three-way transaction, the agreement provides that a lessee sell to a third-party dealer a vehicle (or other tangible personal property) which the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.

EXAMPLE. A enters into a three-way agreement with B, the lessor. Under the terms of the contract, A sells a 2005 Ford Taurus owned by A to C, a used car dealer. The retail price for the Ford Taurus is $30,000. C then sells the Ford Taurus to B for the reduced price of $25,000. B then leases the Ford Taurus to A for a period of 12 months. The $5,000 difference between the reduced sale price and the retail price of the vehicle is not allowed as a trade-in on the sale of the vehicle for use tax purposes. See also Reynolds Motor Co. et al. v. Iowa Dep't. of Revenue, Equity 72050, Dist. Ct. of Scott Cty., Iowa, August 28, 1987.

This rule is intended to implement Iowa Code sections 423.1(47)"a"(7) and 423.3(59).

701—212.6(423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire sales price from the sale. The installation charges would not be taxable if the installation service is not an enumerated service, and where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if (1) the services are exempt from tax (e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure); or the services are rendered in connection with the installation of new industrial machinery or equipment, and (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax. See rule 701—219.13(423).

This rule is intended to implement Iowa Code sections 423.1(47)"a"(5) and 423.1(47)"b"(4).

701—212.7(423) Service charge and gratuity. When the purchase of any food, beverage or meal automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, a beverage or a meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor a charge arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, a beverage or a meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, a beverage or a meal, it shall be considered a tip and not subject to tax. Cohen v. Playboy Club International, Inc., 19 Ill. App. 3d 215, 311 N.E.2d 336; Baltimore Country Club, Inc. v. Comptroller of Treasury, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code sections 423.1(47) and 423.2(1).

CHAPTER 213
MISCELLANEOUS TAXABLE SALES

Rules in this chapter include cross references to provisions in 701—Chapters 15 and 18 that were applicable prior to July 1, 2004.

701—213.1(423) Tax imposed. The Iowa state retail sales tax is imposed at the rate of 5 percent of the sales price from the sale at retail of tangible personal property and certain enumerated services. The rules in this chapter deal with certain specific attributes of the Iowa state retail sales tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement Iowa Code section 423.2.

701—213.2(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, shall be subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).

701—213.3(423) Conditional sales contracts. Iowa Code section 423.1(46) defines sales to include "conditional sales." A conditional sale is a sale in which the vendee receives the right to the use of the goods which are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

Conditional sales in most cases are evidenced by the facts supporting the nature of the vendor's business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee. A conditional sales contract would exist where: the vendee/lessee has total control over the property and is responsible for all losses or damages; the transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's "lease" agreements, except in cases of default; and the vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale. In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

When a conditional sale exists, the seller shall bill the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property which is the subject of the contract. Harold D. Sturtz v. Iowa Department of Revenue, 373 N.W.2d 131 (Iowa 1985). No further tax is due on the periodic payments. Interest and finance charges shall not be considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax. State ex rel. Turner v. Younker Bros., Inc., 210 N.W.2d 550, 562 (Iowa 1973).

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.4(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable. However, see rule 701—231.16(423), which provides for a phase-out of and eventual complete exemption from tax for propane and other gases sold for use in residential heating.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, sales or use tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, sales or use tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The sales price from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. The sales price of gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.5(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell

such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales price shall be subject to tax.

213.5(1) The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

213.5(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not the sales price of a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price shall not be subject to either sales or use tax.

213.5(3) The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency shall be subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale shall be subject to tax for the face value alone. Losana Corp. v. Porterfield, 14 Ohio St.2d 42, 236 N.E.2d 535 (1968).

EXAMPLE 1. Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2. Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax. Also see Attorney General Opinion Griger to Bair, Director of Revenue, May 15, 1980, #80-5-13.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

701—213.6(423) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication services from telephone companies and furnish those services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charge which the hotel makes to its guests for such communication service, regardless of whether a guest's calls are local or long-distance within the state. However, the hotel would purchase any communication service which it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—213.7(423) Consignment sales. When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

The sales price of sales of tangible personal property by an agent or consignee for another person shall be exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.8(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions. The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions shall be subject to tax when sold to users or consumers. Reference rule 701—18.33(422,423) for sales to printers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail. Long v. Roberts & Son, 234 Ala. 570 176 So. 213 (1937); People ex rel. Walker Engraving Corporation v. Groves, 268 N.Y. 648, 193 N.E. 539 (1935).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

701—213.9(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax. Linwood Stone Products Company v. State Department of Revenue, Iowa, 175 N.W.2d 393 (1970).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.10(423) Sales on layaway. The sales price from sales on layaway is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside "on layaway" and is not available for sale to the general public. This option to purchase is exercised by the customer's making one or more "layaway payments." The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. See Holland v. Brown, 15 Utah 2d 422, 394 P.2d 77 (1964) and Sturtz v. Iowa Department of Revenue, 373 N.W.2d 131 (Iowa 1985). Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

A sale on layaway should not be confused with a "conditional sale." The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sales situation, physical possession passes first; then after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both

possession and title pass at the same time after all payments are made. The conditional sale is a much more common commercial arrangement than the sale on layaway.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.11(423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the sales price of which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from such sale shall be taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax. See In Re Des Moines-Winterset Monuments, Inc., Docket No. 79-228-6A-DR, March 13, 1980.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.12(423) Mortgages and trustees. Pursuant to the provisions of a chattel or any other document evidencing a creditor's interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to the sales price of inventory and noninventory goods, provided the owner is in the business of making retail sales of tangible personal property or taxable services. In Re Hubs Repair Shop, Inc., 28 B.R. 858 (Bkrtcy. 1983).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.13(423) Sale of pets. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

701—213.14(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.15(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements shall be taxable. Such rentals shall include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.16(423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price which ultimately constitutes a bad debt. Reference rule 701—15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.17(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.18(423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials which have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.19(423) Used or secondhand tangible personal property. The sales price on the sale of used or secondhand tangible personal property in the form of goods, wares, or merchandise shall be taxable in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.20(423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

The sales price of floor coverings other than carpeting which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials which are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

The sale of carpeting is not to be treated as the sale of a "building material." The sales price of rugs, mats, linoleum, and other types of floor coverings which are not attached but which are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

The sale of "carpeting" to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. "Carpeting" is any floor covering made of fabric,

usually of wool or synthetic fibers. For purposes of this rule, "carpeting" also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

The sales price of carpeting, with installation, is taxable in the following manner:

1. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.

2. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.

3. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C's home. Whether or not A will purchase the carpeting from B for A's own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A. A contracts with C to install carpeting in C's home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A's resale of the carpet to C, but not upon A's charges for carpet installation, a nontaxable service.

EXAMPLE B. A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C. A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1)"b."

701—213.21(423) Goods damaged in transit. If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed. Harold D. Sturtz v. Iowa Department of Revenue, 373 N.W.2d 131 (Iowa 1985).

If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

EXAMPLE. A company in Chicago transports furniture in its own truck to customer B in Des Moines. Under the contract of sale, delivery of the furniture would occur in Des Moines and sales tax would ordinarily be due upon the sales price of the sale. However, in East Moline, Illinois, the furniture truck is involved in an accident, and B's furniture is destroyed. There was no delivery of the furniture to B, thus no sale to B and thus no sales tax is due. Had the point of delivery been Chicago, Illinois, a sale would have occurred outside this state, but no use tax would be due because B never made any "use" of the furniture in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—213.22(423) Snowmobiles, motorboats, and certain other vehicles. The sales price of snowmobiles, all-terrain vehicles, dirt bikes, race karts or go-carts, and motorboats shall be subject to tax when purchased and shall not be classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapter 423.

701—213.23(423) Photographers and photostaters. Tax shall apply to the sales price of photographs and photostat copies, whether or not produced to the special order of the customer, and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

Tax shall not apply to the sales price of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sales price of materials to photographers or producers which is used in the processing of photographs or photostat copies.

The sales price of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—213.24(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

213.24(1) In general. The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, included but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent. The sales price of transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 423.1(32) and 423.1(46).

213.24(2) Affiliated corporations acting as a unit. If an affiliated corporation acts as an agent for another affiliated corporation in a transaction listed in 213.24(1), the corporations may be considered as acting as a unit. There may not be taxable transactions between the affiliates, but this does not create an exemption for the purchase of tangible personal property or taxable services.

EXAMPLE. Corporation A and Corporation B are affiliated corporations. Corporation A is in the business of negotiation, arbitration, and mediation. Corporation B runs a fleet of taxis. Corporation A acts as Corporation B's agent in negotiating a contract between B and an outside third party C for C to do all of B's vehicle repair at a very favorable price. In spite of a bookkeeping entry listing a sale of the contract for

repair from A to B, in securing the contract, the corporations have "acted as a unit," and the "sale" from A to B is not subject to Iowa tax. However, any payments from A to C or from B to C in return for C's performance of taxable vehicle repair would be subject to tax, and C must collect Iowa sales tax on the sales price of those services.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 423.1(32) and 423.1(46).

701—213.25(423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether the urban transit system is created by government.
2. Whether the urban transit system is wholly owned by government.
3. Whether the urban transit system is operated for profit.
4. Whether the urban transit system is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or whether payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

The considerations enumerated above are not all-inclusive and the presence of some considerations and absence of others does not necessarily establish the exemption. Unemployment compensation of North Carolina v. Wachovia Bank and Trust Company, 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

CHAPTER 214
MISCELLANEOUS NONTAXABLE TRANSACTIONS

Rules in this chapter include cross references to provisions in 701—Chapters 16 and 18 that were applicable prior to July 1, 2004.

701—214.1(423) Corporate mergers which do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one corporation to another pursuant to a statutory merger, the transfer is not a "sale" in which the sales price is subject to tax if all of the following circumstances exist: (1) The merger is pursuant to statute (for example, Iowa Code section 490.1106); (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging corporation to a surviving corporation and not for any consideration; and (3) the merging corporation is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

Transactions which are not of the type described above may involve taxable sales. See the following court cases relating to this area: Nachazel v. Mira Co. Mfg., 466 N.W.2d 248 (Iowa 1991); D. Canale & Co. v. Celauro, 765 S.W.2d 736 (Tenn 1989); and Commissioner of Revenue v. SCA Disposal Services, 421 N.E.2d 766 (Mass 1981).

EXAMPLE A. Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement which results in the transfer of A's assets to C and the dissolution of A. In return, A's stockholders receive stock in C. The sales price of A's transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B. Corporations B, D, and E are independent entities. They enter into a merger agreement governed by Iowa Code section 490.1106 and agree to merge into one surviving corporation which will (after the dissolution of B and D) be E. They agree that the shares of merging corporations will be converted into shares of E on an equal basis. The sales price of the transfers of property by the corporations which are parties to the merger are not sales subject to Iowa tax.

EXAMPLE C. Corporation F receives all of Corporation G's outstanding shares from G's sole stockholder. In return, G's sole stockholder receives stock from F. After the transaction, Corporation G continues to exist as a subsidiary of Corporation F. This particular transaction involves a trade or barter of the stock shares of F and G. There is a barter of the stocks and thus a "sale" as that term is understood for the purposes of Iowa sales tax law. However, because the sale involves only intangible property (the stock shares), that sale is not taxable. The stock exchange transaction would not prevent taxation of subsequent transfers of tangible personal property or services between F and G.

EXAMPLE D. Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property, and the sales price of the sale may be subject to Iowa sales tax. However, reference 701—subrule 18.28(2) concerning a casual sale exemption applicable to the liquidation of a business.

This rule is intended to implement Iowa Code section 423.1(46).

701—214.2(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards (reference 701—subrule 16.51(3)) are not sales of tangible personal property and are not sales the sales price of which is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE. Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of $200. Customer A purchases a sweater for $50 from ABC Clothing Company. ABC Clothing Company will debit A's card $52.50 ($50 × 1.05) for the state tax rate of 5 percent or $53 ($50 × 1.06) if one local option tax rate of 1 percent is applicable.

REVENUE DEPARTMENT[701](cont'd)

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—214.3(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

This rule is intended to implement Iowa Code section 423.1(47).

701—214.4(423) Beverage container deposits. Tax shall not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—214.5(423) Exempt sales by excursion boat licensees. The sales price of the following sales by licensees authorized to operate excursion gambling boats is exempt from Iowa sales and use tax: (1) charges for admission to excursion gambling boats, and (2) the sales price from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

The sales price from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and the sales price from nongambling video games and other types of games which do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10(6).

701—214.6(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

214.6(1) In general. A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in Rowe vs. Iowa State Tax Commission, 249 Iowa 1207, 91 N.W.2d 548 (1958).

To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively referred to herein as "agency") shall act as follows:

a. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

b. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

c. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property.

Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

214.6(2) Scope. The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

CHAPTER 225
RESALE AND PROCESSING EXEMPTIONS PRIMARILY OF BENEFIT TO RETAILERS

Rules in this chapter include cross references to provisions in 701—Chapters 15, 17, 18 and 26 that were applicable prior to July 1, 2004.

701—225.1(423) Paper or plastic plates, cups, and dishes, paper napkins, wooden or plastic spoons and forks, and straws. When paper or plastic cups, plates, and dishes, paper napkins, and wooden or plastic spoons, forks, and other utensils are sold with food or other items to a buyer, and the buyer uses or consumes the utensils, sales of those utensils to retailers shall be considered sales for resale. The sales price from the sale of such items by retailers to consumers or users shall be subject to tax.

When these articles are transferred in connection with a service or sold for free distribution by retailers apart from a retail sale, the transaction shall be deemed to be a retail sale to the retailer and shall be taxable.

Sales of reusable placemats to retailers that sell meals shall be subject to tax.

EXAMPLE 1. A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2. A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer sells these items with tangible personal property to the retail-

er's customers. The sale of these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.2(423) A service purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service.

225.2(1) Services purchased for resale are purchased exempt from tax.

EXAMPLE 1. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service from Z for resale to Y.

EXAMPLE 2. B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair services furnished by C to B constitute a sale of such services to B for resale to E, who is the consumer of these services.

EXAMPLE 3. B owns an auto repair shop and C brings an automobile in to have the air conditioner fixed. B is unable to fix the air conditioner so the auto is sent to G, who is an air-conditioning specialist. The sale of G's service to B is a sale for resale by B to C.

225.2(2) Services not purchased for resale. The tax on services must be collected at the time the service is complete even if the service is not purchased by the ultimate beneficiary.

EXAMPLE. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting the tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering the testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B, and B is the consumer of the testing services.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.3(423) Services used in the repair or reconditioning of certain tangible personal property. Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type which is normally sold in the regular course of the retailer's business and which is held for sale by the retailer.

EXAMPLE 1. A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax-free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

EXAMPLE 2. B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

EXAMPLE 3. C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

EXAMPLE 4. XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling televisions subject to sales tax. However, in this instance XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 423.1(50) and 423.1(51).

701—225.4(423) Tangible personal property purchased by a person engaged in the performance of a service.

225.4(1) In general.

a. Tangible personal property purchased by a person engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Tangible personal property which is not sold in the manner set forth in "a" above is not purchased for resale and thus is subject to tax at the time of purchase by a person engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service, and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE 1. An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity which is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a "resale" of the item.

EXAMPLE 2. An automobile repair shop purchases solvents which are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvents since the solvents are not sold to the customer and, in this case, the items are not transferred to a customer in a form or quantity which is capable of a fixed or definite price value. Thus, the solvents are deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE 3. A retailer purchases television picture tubes tax-free and makes a separate charge for the picture tube to the customer. Since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value, the retailer may purchase the picture tube exempt from tax for subsequent resale.

EXAMPLE 4. A beauty shop or barber shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty shop or barber shop purchases such items from its supplier because the customers of the beauty shop or barber shop are not separately billed for the items and because the items are not transferred to the customer in a form or quantity capable of a fixed or definite price

REVENUE DEPARTMENT[701](cont'd)

value. The items are consumed by the beauty shop or barber shop.

EXAMPLE 5. A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas, and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the items.

EXAMPLE 6. An accounting firm purchases plastic binders which are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, because there is no sale to the customer.

EXAMPLE 7. A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE 8. A jeweler purchases materials such as main springs and crystals to be used in the performance of a service. These items are purchased by the jeweler for resale when they are transferred to the customer in a form or quantity capable of a fixed or definite price value, and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE 9. A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal....$60"; "Fertilizer...50 lbs....$100"; and "Materials applied to lawn...4 bushel...$40". The following are examples of information placed upon an invoice which would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...$30" or "Fifty pounds of fertilizer was applied to this lawn."

225.4(2) Purchases made by automobile body shops or garages with body shops. Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

a. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. See Iowa Code section 423.3(2).

b. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two conditions is not met, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items which will be resold (see list of items in this rule) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. Reference rule 701—15.3(422,423). Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax permit or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" which such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

Abrasives
Battery water
Body filler or putty
Body lead
Bolts, nuts and washers
Brake fluid
Buffing pads
Chamois
Cleaning compounds
Degreasing compounds
Floor dry
Hydraulic jack oil
Lubricants
Masking tape
Paint
Polishes
Rags
Rivets and cotter pins
Sanding discs
Sandpaper
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts.

Accessories
Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Door guards
Door handles
Doors
Engine parts
Fenders
Floor mats
Grilles
Headlamps
Hoods
Hubcaps
Radiators

Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies which are generally not transferred to the body shop's customer during the course of the repair and therefore could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer. Therefore, the body shop must pay tax to the vendor at the time of purchase.

Air compressors and parts
Body frame straightening equipment
Brooms and mops
Buffers
Chisels
Drill bit
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Signs
Spreaders for putty
Washing equipment and parts
Welding equipment and parts

Because of the nature of the body shop business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops, and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. See W. J. Sandberg Co. v. Iowa State Board of Assessments and Review, 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by body shops. If materials are purchased from non-Iowa suppliers that do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the department of revenue on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule 701—221.62(423). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule; their purchases of such items are taxable.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE. A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, and polishes. In its invoice to the customer, the labor is separately listed at $600, the part (fender) is separately listed at $600, and the category of "materials" is separately listed for a lump sum of $200, for a total billing of $1,400. The Iowa sales tax computed by the body shop should be on $1,200, which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for the taxable "sales price," as defined in Iowa Code section 423.1(47), which is taxable under Iowa Code section 423.2.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or parts charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at the time of purchase.

This rule is intended to implement Iowa Code sections 423.1(35) and 423.3(2).

701—225.5(423) Maintenance or repair of fabric or clothing. Sales of chemicals, solvents, sorbents, or reagents directly used and consumed in the maintenance or repair of fabric or clothing are exempt from tax. See 701—Chapter 211 for definitions of the terms "chemical," "solvent," "sorbent," and "reagent." This rule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances which do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing, but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethlyene (also known as "perch") or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt from tax. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(50).

REVENUE DEPARTMENT[701](cont'd)

701—225.6(423) The sales price from the leasing of all tangible personal property subject to tax. See 701—Chapter 211 for the definitions of the words "lease or rental" and "tangible personal property" which are applicable to this rule.

225.6(1) Past and present taxation of leases. Prior to July 1, 2004, the rental of tangible personal property was treated as a taxable service for the purposes of Iowa sales and use tax law; reference 2003 Iowa Code section 422.43(11) and 701—subrule 26.18(2). The "rental" of tangible personal property was not a "sale" of that property, and therefore a purchase for subsequent leasing or rental was not a purchase for resale. See Cedar Valley Leasing, Inc. v. Iowa Department of Revenue, 274 N.W.2d 357 (Iowa 1979).

On and after July 1, 2004, the rental of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because "leases" and "rentals" of tangible personal property are taxable retail "sales" of that property. The rental of tangible personal property is no longer listed as a taxable enumerated service. The resale exemption in favor of sales for resale of tangible personal property is now applicable to sales and leases of tangible personal property for subsequent rental or lease.

EXAMPLE A. Al's Rent All buys blowers, hand tools, ladders, plumbers' snakes, sanders, and tillers for subsequent short-term rental to various customers. Al's purchases of these items of equipment are purchases for resale and are exempt from tax as of July 1, 2004.

EXAMPLE B. In addition to its purchases of equipment for subsequent rental, Al's Rent All leases from its suppliers, long-term, items of heavier equipment such as backhoes, forklifts, manlifts, tractors, and trenchers, again for subsequent leasing to various customers. Since the leasing of tangible personal property is now a purchase of that property, Al's leasing for later sublease is a purchase of tangible personal property and is exempt from tax at the time of purchase as the purchase of tangible personal property for subsequent resale.

225.6(2) Distinguishing leases and rentals of tangible personal property from the furnishing of nontaxable services. In order to determine whether a particular fee is charged for the rental of tangible personal property or for the furnishing of a nontaxable service, the department looks at the substance, rather than the form, of the transaction. When the possession and use of tangible personal property by the recipient is merely incidental as compared to the nontaxable service performed, all of the sales price is derived from the furnishing of such nontaxable service and, unless a separate fee or charge is made for the possession and use of tangible personal property, no sales price is derived from the rental of tangible personal property. When the nontaxable service is merely incidental to the possession and use of the tangible personal property by the recipient, all of the sales price is derived from the furnishing of tangible personal property rental and, unless a separate fee or charge is made for the nontaxable service, no sales price is derived from the nontaxable service. When a tangible personal property rental agreement contains separate fee schedules for rent and for nontaxable service, only the sales price derived from the tangible personal property rental is subject to tax. This rule is not to be so construed as to be at variance with Iowa Code sections 423.2(8) and 423.3(70) concerning bundled service contracts and transportation services respectively.

225.6(3) Rental of real property distinguished from rental of tangible personal property. If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the sales price is for the rental of real property and is not subject to tax, unless taxable room rental is involved; reference rule 701—18.40(422,423).

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the sales price from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

225.6(4) Rental of tangible personal property and rental of fixtures. The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture. See Equitable Life Assurance Society of the United States v. Chapman, 282 N.W. 355 (Iowa 1983) and Marty v. Champlin Refining Co., 36 N.W.2d 360 (Iowa 1949). The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis; see Broadway Mobile Home Sales Corp. v. State Tax Commission, 413 N.Y.S.2d 231 (N.Y. 1979). Reference also rule 701—18.40(422,423).

225.6(5) Rental of tangible personal property embodying intangible personal property rights—transactions taxable and exempt. Under the law, the sales price from rental of tangible personal property includes royalties and copyright and license fees. The rental of all property which is a tangible medium of expression for the intangible rights of royalties and copyright and license fees is subject to tax. Thus the sales price from the rental of films, videodiscs, videocassettes, and any computer software (other than rental of custom programs, reference 701—paragraph 18.34(3)"a") which is the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible property shall be subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. See Boswell v. Paramount Television Sales, Inc., 282 So.2d 892 (Ala. 1973). Reference also rule 701—17.18(422, 423) regarding the exemption from the requirements of this subrule for rental of films, videotapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees that broadcast the contents of these media for public viewing or listening.

225.6(6) Deposits and additional fees. Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit required. A deposit subject to forfeiture for the lessee's failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable rental and are subject to tax. Such deposits may include a deposit of the first rental payment which is applied to the rental receipts.

When tangible personal property is rented for a flat fee per month, per year, or for other designated periods, plus an addi-

tional fee based on quantity and capacity of production or use, the entire charge is taxable.

225.6(7) Leasing of tangible personal property moving in interstate commerce.

a. On and after July 1, 2004, in the case of a lease or rental that requires recurring periodic payments, the first periodic payment is taxed to Iowa if the property was delivered to the lessee in Iowa. Periodic payments made subsequent to the first payment may be taxed only by the state in which the property is primarily located for the period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. Where a nonresident lessor leases tangible personal property to a resident or nonresident lessee and the lessee uses the property in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments if Iowa is the primary location of the property, provided the lessor maintains a place of business in Iowa as described in 2005 Iowa Code sections 423.1(43) and 423.14(2). Whether the lease agreement is executed in Iowa or not is irrelevant. State Tax Commission v. General Trading Co., 322 U.S. 335, 64 S.Ct. 1028,88 L.Ed 1309 (1944).

c. Where a lessee is the recipient of equipment rental services sourced to Iowa and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee rents tangible personal property, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to 2005 Iowa Code section 423.14, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside Iowa and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa, uses it in Iowa, and Iowa becomes the primary location of the property, Iowa use tax applies to subsequent rental payments.

e. If a sales or use tax has already been paid to another state on the sales price of tangible personal property prior to the use of that property in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if a sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given.

This rule is intended to implement Iowa Code sections 423.1(22), 423.1(43), 423.1(45), 423.1(54), 423.2(1), and 423.15(2).

CHAPTER 230
EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND OTHER PERSONS ENGAGED IN PROCESSING

Rules in this chapter include cross references to provisions in 701—Chapters 15, 18 and 26 that were applicable prior to July 1, 2004.

701—230.1 Reserved.

701—230.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing. An expanded definition of "processing" is allowed to manufacturers of food products for human consumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services.

230.2(1) "Manufacturer" characterized. A manufacturer is a person or entity different from a merchant, dealer, or retailer. See Commonwealth v. Thackara Mfg. Co., 27 A. 13 (Pa. 1893). In order for a business to be a manufacturer, the principal business of that business must be manufacturing. See Associated General Contractors v. State Tax Commission, 123 N.W.2d 922 (Iowa 1963). Another distinction is that a merchant or retailer sells in order to earn a profit and a manufacturer sells to take profits already earned from prior activity. See State v. Coastal Petrol Inc., 198 So. 610 (Ala. 1940). A person primarily engaged in selling tangible personal property in order to earn a profit and only incidentally engaged in creating products suitable for use from raw materials is not a manufacturer. A retail grocery store, incidentally and not primarily engaged in manufacturing activities such as meat cutting or production and packaging of baked goods, is not a "manufacturer of food products for human consumption" and is not entitled to claim the special processing exemption allowed to those manufacturers. Retail food stores, restaurants, and other persons incidentally engaged in food manufacturing activities can, however, continue to claim on their incidental processing activities the processing exemption allowed to persons who are not manufacturers of food products for human consumption. See rule 701—230.3(423).

230.2(2) The following activities constitute processing when performed by a manufacturer to create food products for human consumption. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

a. Treatment of material that changes its form, context, or condition in order to produce a marketable food product for human consumption. "Special treatment" of the material to change its form, context, or condition is not necessary to lawfully claim the exemption. Examples of "treatment" which would not be "special" are the following: the washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be "special treatment."

b. Maintenance of the quality or integrity of the food product and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating which holds the food product at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or to hold the food product in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food. Also, processing of food products for human consumption does not cease when the food product is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the product marketable is exempt from tax.

REVENUE DEPARTMENT[701](cont'd)

c. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food product is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

d. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of a food product. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment which cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food samples for testing would be exempt from tax. Finally, electricity used to power "bug lights" or other insect-killing equipment used in areas where food products are manufactured or stored would be exempt from tax.

e. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for marketable food products for human consumption is exempt from tax. For example, electricity used in plastic bottle-forming machines by a food manufacturer is exempt from tax if the plastic bottles will be used to hold a marketable food product, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

f. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food product into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

g. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material which will become a marketable food product or used to move the marketable food product itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or food product and taxable services used in door openers which open doors for forklifts or other devices moving the material or product. Any loading dock which is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food products to a loading dock is exempt from tax. If a food product is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement Iowa Code section 423.3(49).

701—230.3(423) Services used in processing. Electricity, steam, or any taxable service is used in processing only if the service is used in any operation which subjects raw material to some special treatment which changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

230.3(1) The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price is to be distinguished from that of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. The latter sales price would be taxable.

230.3(2) The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax. See Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission, 81 N.W.2d 437 (Iowa 1957).

230.3(3) Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be "used in processing" and, therefore, its sales price would be subject to tax. Fischer Artificial Ice, supra.

Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam which is consumed for taxable purposes. When practical, electricity or steam consumed as power or used directly in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam which is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. Reference 701—subrule 15.3(2). The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(49).

701—230.4(423) Chemicals, solvents, sorbents, or reagents used in processing. Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail shall be exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers' guides are considered to be retail sales. See 701—Chapter 211 for definition of the words "chemicals," "solvents," "sorbents," and "reagents."

REVENUE DEPARTMENT[701](cont'd)

For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

To qualify for this exemption, all of the following conditions must be met:

1. The item must be a chemical, solvent, sorbent, or reagent.
2. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing as defined in referenced rule 701—18.29(422, 423).
3. The processing must be performed on tangible personal property intended to be sold ultimately at retail.
4. The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code section 423.3(50).

701—230.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for use in "processing," as those terms are defined in referenced 701—subrule 18.58(1).

This rule is intended to implement Iowa Code section 423.3(51).

701—230.6(423) Sale of electricity to water companies. The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, which is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, "river" means a natural body of water or waterway that is commonly known as a river. "Well," for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain oil, water, gas, etc.; or a shaft or excavation in the earth, in mining, from which run branches. Pacific Gas and Electric Company v. Hufford, 319 P.2d 1033, 1040 (Calif. 1957), citing Webster's New International Dictionary, 2nd ed., unabridged.

This rule is intended to implement Iowa Code section 423.3(52).

701—230.7(423) Wind energy conversion property. The sales price from the sale of property used to convert wind energy to electrical energy or the sales price from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy is exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 423.3(53).

701—230.8(423) Exempt sales or rentals of core making and mold making equipment, and sand handling equipment. This rule is applicable to the period beginning on or after July 1, 2004.

230.8(1) Exempt sales and rentals of machinery and equipment. The sales price from sales or rentals of core making, mold making, and sand handling machinery and equipment directly and primarily used by a foundry in the mold making process is exempt from tax. For the purposes of this rule, a "foundry" is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment which may be exempt under this rule includes sand storage tanks, conveyers, patterns, mallor controllers, and sand mixers. A nonexclusive list of items which would not be exempted by this rule includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold making process are not exempted from tax by this rule. For the purposes of this rule, core making, mold making, and sand handling equipment also include replacement parts necessary for the operation of the equipment which is used directly and primarily by a foundry in the mold making process. Reference 701—subrule 18.58(1) for definitions of "directly used," "equipment," "machinery," "replacement part" and "supplies."

230.8(2) Exempt sales of fuel and electricity. The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax.

230.8(3) Exempt design and installation services. The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax. Reference rule 701—26.16(422) for characterizations of the words "installation" and "electronic installation."

This rule is intended to implement Iowa Code section 423.3(82).

701—230.9(423) Chemical compounds used to treat water. Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and also becomes a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code section 423.3(50).

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SECRETARY OF STATE[721]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 52.5, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

The proposed amendments provide programming and vote counting procedures for Diebold Election Systems' voting system which includes the Global Election Management System (GEMS), AccuVote-OS Optical Scan precinct and central count ballot scanner and the AccuVote TSX DRE touch screen direct recording electronic voting machine. The AccuVote TSX DRE includes an optional, external paper report printer to display voters' choices before the voter records the ballot.

Any interested person may make written suggestions or comments on these proposed amendments through 5 p.m. on November 1, 2005. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823 or at the Secretary of State's office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by 5 p.m. on November 1, 2005.

These amendments are intended to implement Iowa Code chapter 52.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend **721—22.1(52)** by adding the following **new** definitions in alphabetical order:

"Audio ballot" means the presentation of the contents of a ballot on a direct recording electronic voting machine in a recorded format, played to the voter over headphones. Audio ballot is used to make voting accessible to persons with visual disabilities.

"Early voting" means the process of receiving ballots from voters before election day without using absentee voting procedures. Iowa law does not authorize this process.

ITEM 2. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.262(52) Diebold Election Systems' AccuVote-OS precinct count device.

22.262(1) Security. The commissioner shall have a written security plan for the voting system. Access to voting equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

a. Passwords used at polling places shall be changed for each election.

b. For each election, the precinct chairperson shall be responsible for the custody and security of the control card and ballot box keys and the security of the voting system.

22.262(2) Configuration choices. The following selections are mandatory for all elections:

a. Reject settings shall be configured as follows:

(1) Return to voters ballots that include one or more overvoted race and blank-voted ballots. Include on the override log the number of times the override option was used for overvoted and blank voted ballots.

(2) Divert to the write-in ballot bin only ballots with write-in votes.

(3) Do not include reject settings for blank voted races, undervoted races, straight party overvotes, multiparty overvotes or duplicate votes.

b. Tally settings shall be as follows:

(1) The straight party shall be "Exclusive."

(2) The write-in setting shall be "Combined."

22.262(3) Zero totals reports.

a. Long form zero totals reports showing all counters at zero shall be printed following memory card programming, before counting ballots in the Pre-Election Mode and as the ballot reader is opened on election day.

b. The election day zero totals report shall be printed twice. The first copy shall be posted in the polling place for public inspection as required by 721—subrule 22.201(2). The second copy shall remain inside the ballot scanner and form a continuous record of the election with the election results report.

22.262(4) Ballot printing. Although the Diebold Election Systems GEMS voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48. The following selections are mandatory for all elections:

a. The voting target shall be an oval printed on the left side of each choice on the ballot.

b. The largest possible font size shall be used for all printing on ballots. The same size font shall be used for all office titles. The same size font shall be used for all candidate names.

22.262(5) Preelection testing. All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52) and 721—subrule 22.201(2). At the commissioner's discretion, the commissioner may conduct additional tests.

22.262(6) Using AccuVote-OS and AccuVote TSX DRE in the same polling place. After the polls are closed and all ballots have been inserted into the AccuVote-OS scanner, the precinct election officials shall print the results from both devices before transmitting the results by modem. The officials may add the results together and include the combined totals in the tally list.

ITEM 3. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.351(52) Diebold Election Systems' AccuVote-OS central count process.

22.351(1) Ballot preparation. The commissioner shall follow the ballot preparation procedures in 721—subrule 22.262(3) prescribed for the system's precinct count device.

22.351(2) Reserved.

ITEM 4. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.434(52) Audio ballot preparation. The commis-

SECRETARY OF STATE[721](cont'd)

sioner shall provide a nonvisual ballot for each election.

22.434(1) Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate's name.

22.434(2) The same voice shall be used for the entire ballot, including instructions, office titles, candidate names and public measures.

ITEM 5. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.464(52) Election Systems' AccuVote TSX DRE.

22.464(1) Voter access cards.

a. Devices available. There are three devices available to program the access cards necessary for voters to use the AccuVote TSX DRE.

(1) Voter Card Encoder is a small device designed for use at polling places. The Voter Card Encoder shall be attached to a lanyard and shall be worn at all times during the hours the polls are open by the precinct election official responsible for issuing voter access cards.

(2) VC Programmer is best suited for early voting, a process not authorized in Iowa law.

(3) The Electronic Pollbook has been approved for use in Iowa as a voter card-encoding feature. It has not been tested with the Iowa voter registration system. The precinct election register features do not necessarily conform to Iowa law.

b. Security. Only the precinct election official assigned to issue voter access cards shall operate the access card-encoding device.

(1) The precinct election official shall receive a declaration of eligibility from the voter before issuing a voter access card.

(2) The precinct official shall program a voter access card when the voter who will use it is ready to vote and a voting machine is available.

(3) The official shall not program a voter access card before a voter is ready to use it.

22.464(2) Ballots. The AccuVote TSX DRE is designed to provide both visual and nonvisual ballots.

a. Visual. The commissioner shall prepare each AccuVote TSX DRE so that the voter does not need to view more than one screen to see all of the information and choices for any office or public measure. More than one office or public measure may be included on the same screen.

b. The Visually Impaired Ballot Station (VIBS) audio ballot feature of the AccuVote TSX DRE shall be prepared for each election.

22.464(3) Machine preparation options. The following settings shall be made for each election in which the AccuVote TSX DRE is used.

a. The commissioner shall not enable the following options:

(1) One Click Vote. When this option is enabled, the AccuVote TSX DRE automatically cancels all of the choices made by a voter for an office if the voter selects more than the maximum number of candidates permitted.

(2) Hide Instruction Page. When this option is enabled, the AccuVote TSX DRE does not display instructions for voting.

(3) Hide Summary Page. When this option is enabled, the AccuVote TSX DRE does not display the summary of the voter's choices after the voter has marked the last item on the ballot.

(4) Hide Jump Buttons. When this option is enabled, the AccuVote TSX DRE does not display the selection buttons that permit the voter to view instructions and the summary of choices made.

(5) VIBS Play All Candidates. When this option is enabled, the AccuVote TSX DRE audio ballot feature plays all of the choices for each office before the voter may select another office.

(6) Pollworker Audio. When this option is enabled, the AccuVote TSX DRE plays a tone to alert precinct election officials when the device is ready for a voter to make choices and again when the voter has completed voting and cast the ballot.

b. The commissioner shall enable the following options:

(1) Confirm Ballot. When this option is enabled, the AccuVote TSX DRE prompts the voter to review choices before casting the ballot.

(2) VIBS Race Keys. When this option is enabled, the voter may move to the next race or the previous one without hearing all choices for the race currently displayed.

(3) Warn Undervotes. When this option is enabled, the AccuVote TSX DRE warns the audio ballot user when the voter has made fewer than the maximum number of choices permitted for an office.

22.464(4) AccuView Printer Module (AVPM). The commissioner may use this optional feature.

a. The commissioner shall not enable the following options:

(1) Print Candidate IDs. When this option is enabled, the AVPM record will include identification numbers assigned to candidates in the ballot preparation process.

(2) Print Bar Codes. When this option is enabled, the AVPM ballot image tape will include bar codes for each choice made by the voter.

(3) Bar Code with Write-Ins. When this option is enabled, the AVPM ballot image tape will include bar codes for write-in votes.

b. The commissioner shall enable the Use Dual Roll option. When this option is enabled, the AVPM ballot image tape will be printed separately from the official record of the zero totals report and the official election results.

c. AccuView ballot images are not official ballots. They shall not be used in a recount.

d. After the polls close on election day, the precinct election officials shall seal each canister containing ballot images recorded during the election. The canisters shall be stored for 22 months after federal elections and for 6 months after all other elections. After the retention period has passed, the tapes shall be destroyed.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2004 — October 31, 2004	6.25%
November 1, 2004 — November 30, 2004	6.25%
December 1, 2004 — December 31, 2004	6.00%
January 1, 2005 — January 31, 2005	6.25%
February 1, 2005 — February 28, 2005	6.25%
March 1, 2005 — March 31, 2005	6.25%
April 1, 2005 — April 30, 2005	6.25%
May 1, 2005 — May 31, 2005	6.50%
June 1, 2005 — June 30, 2005	6.25%
July 1, 2005 — July 31, 2005	6.25%
August 1, 2005 — August 31, 2005	6.00%
September 1, 2005 — September 30, 2005	6.25%
October 1, 2005 — October 31, 2005	6.00%

ARC 4559B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 99D.22 and 159.5(11) and 2005 Iowa Acts, House File 808, sections 19 and 20, the Department of Agriculture and Land Stewardship hereby amends Chapter 62, "Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs," Iowa Administrative Code.

The purpose of this rule is to establish registration fees for Iowa-foaled horses and Iowa-whelped dogs that are part of the state's pari-mutuel betting program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 17, 2005, as **ARC 4436B**. No comments were received. This rule is identical to that published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), this rule became effective upon filing. This emergency filing is necessary to allow for the immediate collection of registration fees. The authorization to impose registration fees was provided to allow the Department to raise revenue necessary to cover the budget of this activity. An emergency filing minimizes the delay and the revenue shortfall that might otherwise occur. Such delay and shortfall could jeopardize the operation of the program and harm participants in the program.

No waiver provision is included in this rule because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to the rule adopted herein.

This rule is intended to implement Iowa Code chapter 99D.

This rule became effective September 21, 2005.

The following rule is adopted.

Amend 21—Chapter 62 by adopting the following **new** rule:

21—62.6(99D) Registration fees.

62.6(1) Iowa-foaled horses. For an Iowa-foaled horse to be eligible to race in Iowa, a $30 registration fee shall be imposed at the time of registration of each stallion, mare or foal registered.

62.6(2) Iowa-whelped dogs. The following fees shall be imposed at the time of registration:

a. Registration of a dam, $25.
b. Registration of a litter, $10.
c. Registration of a dog, $5.

This rule is intended to implement Iowa Code section 99D.22 as amended by 2005 Iowa Acts, House File 808, sections 19 and 20.

[Filed Emergency After Notice 9/21/05, effective 9/21/05]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4569B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 225C.6 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services amends Chapter 24, "Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities," Iowa Administrative Code.

2005 Iowa Acts, House File 538 and House File 841, directed the Department to apply for a waiver to provide Medicaid services to children in need of treatment to cure or alleviate serious mental illness or disorder or emotional damage who would qualify for the care provided by a psychiatric mental institution for children and whose parents are unable to provide such treatment. The children's mental health demonstration waiver was approved July 1, 2005. 2005 Iowa Acts, House File 538, section 4, subsection 4, requires that children receiving services under the waiver shall have access to case management services.

Counties may designate the case management agency for the children's mental health population as they do for people with mental retardation, chronic mental illness, or developmental disabilities. The county may designate an existing agency that serves those populations and is currently certified by the Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission, or may designate an agency that specializes in service to children with serious emotional disturbance and that is not currently certified by the Commission.

These amendments contribute toward the implementation of the waiver by:

- Recognizing a new target population for accredited case management services through a definition of "severe emotional disturbance."
- Specifying a new performance standard for case management services to children with severe emotional disturbance by requiring a case manager-to-child ratio of no more than 1 to 15. A lower ratio is necessary because it is anticipated that the children served in this waiver will require more intensive services, including coaching and follow-up with families, coordination with local and area education agencies and juvenile court services, and frequent crisis intervention and modification of case plans.

These amendments also make technical corrections to language referencing the Commission, in conformance with changes made in Iowa Code chapter 225C by 2004 Iowa Acts, chapter 1090, sections 4 and 5.

These amendments do not provide for waivers in specified situations. Agencies may request a waiver of these provisions under the Department's general rule on exceptions at 441—1.8(17A,217).

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on September 9, 2005.

The Department finds that notice and public participation are impracticable in that there is not enough time to provide for notice and public participation before the scheduled implementation date of the children's mental health waiver. 2005 Iowa Acts, House File 841, section 66, authorizes the Department to adopt rules to implement the waiver without

notice and public participation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that 2005 Iowa Acts, House File 841, section 66, authorizes the Department to adopt emergency rules to implement the children's mental health waiver, and also finds that these amendments confer a benefit on affected agencies by allowing grounds for their certification as case management providers. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(1) and (2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 4568B** to allow for public comment.

These amendments are intended to implement Iowa Code section 225C.6; 2005 Iowa Acts, House File 538, sections 3 and 4; and 2005 Iowa Acts, House File 841, section 13.

These amendments became effective October 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 24**, preamble, first unnumbered paragraph, as follows:

The mental health, ~~and~~ *mental retardation*, developmental disabilities, *and brain injury* commission has established this set of standards to be met by all providers of services to people with mental illness, mental retardation, or developmental disabilities that are under the authority of the commission. These standards apply to providers that are not required to be licensed by the department of inspections and appeals. These providers include community mental health centers, mental health services providers, case management providers, and supported community living providers, in accordance with Iowa Code chapter 225C.

ITEM 2. Amend rule **441—24.1(225C)** as follows:

Amend the definition of "commission" as follows:

"Commission" means the mental health, ~~and~~ *mental retardation*, developmental disabilities, *and brain injury* commission (~~MH/DD~~ *MH/MR/DD/BI* commission) as established and defined in Iowa Code section ~~225C.3~~ *225C.5*.

Adopt the following **new** definition of "serious emotional disturbance" in alphabetical order:

"Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria for the disorder specified by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), published by the American Psychiatric Association; and (2) has resulted in a functional impairment that substantially interferes with or limits a consumer's role or functioning in family, school, or community activities. "Serious emotional disturbance" shall not include developmental disorders, substance-related disorders, or conditions or problems classified in DSM-IV-TR as "other conditions that may be a focus of clinical attention" (V codes), unless those conditions co-occur with another diagnosable serious emotional disturbance.

ITEM 3. Amend subrule **24.4(9)**, paragraph **"b,"** subparagraph **(11)**, as follows:

(11) Within an accredited case management program, the average caseload is no more than 45 individuals per each full-time case manager. *The average caseload of children with serious emotional disturbance is no more than 15 children per full-time case manager.*

[Filed Emergency 9/22/05, effective 10/1/05]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4562B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 83, "Medicaid Waiver Services," and Chapter 90, "Case Management for People with Mental Retardation, Chronic Mental Illness, or Developmental Disabilities," Iowa Administrative Code.

These amendments implement a new category of Medicaid waiver services, the children's mental health services waiver. The waiver was approved at the federal level as a demonstration waiver under Section 1115a of the Social Security Act, but is being administered as a Medicaid home- and community-based services (HCBS) waiver.

The children's mental health services waiver will cover environmental modifications, adaptive devices, and therapeutic resources; family and community support services; in-home family therapy; and respite care for up to 300 children under the age of 18. Eligible children must have a diagnosis qualifying as a "serious emotional disturbance" and have service needs that qualify for the level of care offered in a psychiatric hospital for children. As with other HCBS waivers, consumers must meet the requirements of a Medicaid coverage group except for the consumers' institutional status, and must choose waiver services over institutional services. In the future, the Department plans to implement cost-sharing for waiver services on a sliding scale based on family income.

Consumers approved for the children's mental health waiver must also receive Medicaid case management services. These amendments revise definitions in Chapter 90 to add waiver-eligible children to the targeted population for case management services.

The amendments also include technical changes to remove an obsolete reference to child welfare targeted case management and to correct a form number.

These amendments do not provide for waivers in specified situations. Consumers and providers may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on September 14, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because 2005 Iowa Acts, House File 841, section 66, authorizes the Department to adopt rules to implement the waiver without notice and public participation.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2005 Iowa Acts, House File 841, section 66.

These amendments are also published herein under Notice of Intended Action as **ARC 4561B** to allow for public comment.

These amendments are intended to implement 2005 Iowa Acts, House File 841, section 13, and House File 538, section 3.

These amendments became effective October 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.29(249A) by rescinding and reserving subrule **77.29(2)**.

ITEM 2. Adopt **new** rule 441—77.46(249A) as follows:

441—77.46(249A) HCBS children's mental health waiver service providers. HCBS children's mental health waiver services shall be rendered by provider agencies that meet the general provider standards in subrule 77.46(1) and also meet the standards in subrules 77.46(2) to 77.46(5) that are specific to the waiver services provided. A provider that is approved for the same service under another HCBS Medicaid waiver shall be eligible to enroll for that service under the children's mental health waiver.

77.46(1) General provider standards. All providers of HCBS children's mental health waiver services shall meet the following standards:

a. Fiscal capacity. Providers must demonstrate the fiscal capacity to provide services on an ongoing basis.

b. Direct care staff.

(1) Direct care staff must be at least 18 years of age.

(2) Providers must complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 249A.29 before employment of a staff member that will provide direct care.

(3) Direct care staff may not be the spouse of the consumer or the parent or stepparent of the consumer.

c. Outcome-based standards and quality assurance.

(1) Providers shall implement the following outcome-based standards for the rights and dignity of children with serious emotional disturbance:

1. Consumers are valued.
2. Consumers are a part of community life.
3. Consumers develop meaningful goals.
4. Consumers maintain physical and mental health.
5. Consumers are safe.
6. Consumers and their families have an impact on the services received.

(2) The department's bureau of long-term care quality assurance staff shall conduct random quality assurance reviews to assess the degree to which the outcome-based standards have been implemented in service provision. Results of outcome-based quality assurance reviews shall be forwarded to the certifying or accrediting entity.

(3) A quality assurance review shall include interviews with the consumer and the consumer's parents or legal guardian, with informed consent, and interviews with designated targeted case managers.

(4) A quality assurance review may include interviews with provider staff, review of case files, review of staff training records, review of compliance with the general provider standards in this subrule, and review of other organizational policies and procedures and documentation.

(5) Corrective action shall be required if the quality assurance review demonstrates that service provision or provider policies and procedures do not reflect the outcome-based standards. Technical assistance for corrective action shall be available from the department's bureau of long-term care quality assurance staff.

d. Incident reporting. The provider shall document major and minor incidents and make the incident reports and related documentation available to the department upon request. The provider shall ensure cooperation in providing pertinent information regarding incidents as requested by the department.

(1) Major incident defined. A "major incident" means an occurrence involving a consumer that:

1. Results in a physical injury to or by the consumer that requires a physician's treatment or admission to a hospital;
2. Results in a consumer's death or the death of another person;
3. Requires emergency mental health treatment for the consumer;
4. Requires the intervention of law enforcement;
5. Requires a report of child abuse pursuant to Iowa Code section 232.69; or
6. Constitutes a prescription medication error or a pattern of medication errors that could lead to the outcome in numbered paragraph "1," "2," or "3."

(2) Minor incident defined. A "minor incident" means an occurrence involving a consumer during service provision that is not a major incident and that:

1. Results in the application of basic first aid;
2. Results in bruising;
3. Results in seizure activity;
4. Results in injury to self, to others, or to property; or
5. Constitutes a prescription medication error.

(3) Report form. Each major or minor incident occurring during service provision shall be recorded on an incident report form. The form shall be completed and signed by the provider staff who were directly involved at the time of the incident or who first became aware of the incident. The report shall include the following information:

1. The name of the consumer involved.
2. The date and time the incident occurred.
3. A description of the incident, including designation of the incident as a major or minor incident.
4. The names of all provider staff and others who were present at the time of the incident or responded after becoming aware of the incident. The confidentiality of other waiver-eligible or non-waiver-eligible consumers who were involved in the incident must be maintained by the use of initials or other means.
5. The action that the staff took to manage the incident.
6. The resolution of or follow-up to the incident.

(4) Reporting procedure for major incidents. When a major incident occurs or when staff becomes aware of a major incident, the procedure shall be as follows:

1. Provider staff shall notify the supervisor immediately.
2. The supervisor shall immediately notify the consumer's case manager and the consumer's parents or legal guardian, unless the parent or legal guardian is suspected as the perpetrator. If a parent or legal guardian is suspected as the perpetrator, the supervisor shall follow the procedure for reporting child abuse according to Iowa Code section 232.69.

3. Provider staff shall complete the incident report and forward the report to the supervisor within 24 hours of the incident.

4. Within 72 hours of the incident, the supervisor shall send a copy of the incident report to the consumer's case manager, the bureau of long-term care, and the consumer's parents or legal guardian.

5. The provider shall file a copy of the incident report in a centralized location and make a notation in the consumer's case file.

(5) Reporting procedure for minor incidents. When a minor incident occurs:

1. Provider staff shall notify the consumer's parents or legal guardian immediately.

2. Provider staff shall complete an incident report and submit the report to the supervisor within 24 hours of the minor incident.

3. Provider staff shall make a notation in the consumer's case file.

4. The supervisor shall file the incident report in a centralized location.

77.46(2) Environmental modifications, adaptive devices, and therapeutic resources providers. The following agencies may provide environmental modifications, adaptive devices, and therapeutic resources under the children's mental health waiver:

a. A community business that:

(1) Possesses all necessary licenses and permits to operate in conformity with federal, state, and local statutes and regulations, including Iowa Code chapter 490; and

(2) Submits verification of current liability and workers' compensation insurance.

b. A retail or wholesale business that otherwise participates as a provider in the Medicaid program.

c. A home and vehicle modification provider enrolled under another HCBS Medicaid waiver.

d. A provider enrolled under the HCBS mental retardation or brain injury waiver as a supported community living provider.

77.46(3) Family and community support services providers.

a. Qualifications. The following agencies may provide family and community support services under the children's mental health waiver:

(1) Rehabilitative treatment services skill development providers certified in good standing under 441—185.10(234).

(2) Community mental health centers accredited in good standing as providers of outpatient psychotherapy and counseling under 441—Chapter 24.

b. Staff training.

(1) Within one month of employment, staff members must receive the following training:

1. Orientation regarding the agency's mission, policies, and procedures; and

2. HCBS philosophy and outcomes for rights and dignity for the children's mental health waiver.

(2) Within three months of employment, staff members must receive the following training:

1. Introduction to serious emotional disturbance and service provision;

2. Confidentiality;

3. Provision of medication;

4. Identification and reporting of consumer and dependent adult abuse;

5. Incident reporting;

6. Documentation of service provision; and

7. Appropriate restraint techniques.

(3) Until a staff member receives the training identified in subparagraph (2), the staff member shall not provide any direct service without the presence of experienced staff.

(4) Within the first year of employment, staff members must complete 24 hours of training in children's mental health issues.

(5) During each consecutive year of employment, staff members must complete 12 hours of training in children's mental health issues.

c. Support of crisis intervention plan. A family and community support provider shall develop and implement policies and procedures for maintaining the integrity of the individualized crisis intervention plan as defined in 441—24.1(225C) that is developed by each consumer's interdisciplinary team. The policies and procedures shall address:

(1) Sharing with the case manager and the interdisciplinary team information pertinent to the development of the consumer's crisis intervention plan.

(2) Training staff before service provision, in cooperation with the consumer's parents or legal guardian, regarding the consumer's individual mental health needs and individualized supports as identified in the crisis intervention plan.

(3) Ensuring that all staff have access to a written copy of the most current crisis intervention plan during service provision.

(4) Ensuring that the plan contains current and accurate information by updating the case manager within 24 hours regarding any circumstance or issue that would have an impact on the consumer's mental health or change the consumer's crisis intervention plan.

77.46(4) In-home family therapy providers. The following agencies may provide in-home family therapy under the children's mental health waiver:

a. Community mental health centers accredited in good standing as providers of outpatient psychotherapy and counseling under 441—Chapter 24.

b. Rehabilitative treatment services therapy and counseling providers certified in good standing under 441—185.10(234).

77.46(5) Respite care providers.

a. Qualifications. The following agencies may provide respite services under the children's mental health waiver:

(1) Providers certified or enrolled as respite providers under another Medicaid HCBS waiver.

(2) Group living foster care facilities for children licensed in good standing by the department according to 441—Chapters 112 and 114 to 116.

(3) Child care centers licensed in good standing by the department according to 441—Chapter 109 and child development homes registered according to 441—Chapter 110.

(4) Camps certified in good standing by the American Camping Association.

(5) Home health agencies that are certified in good standing to participate in the Medicare program.

(6) Home care agencies that meet the requirements set forth in department of public health rule 641—80.7(135).

(7) Adult day care providers that are certified in good standing by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24.

(8) Assisted living programs certified in good standing by the department of inspections and appeals.

(9) Residential care facilities for persons with mental retardation licensed in good standing by the department of inspections and appeals.

(10) Nursing facilities, intermediate care facilities for the mentally retarded, and hospitals enrolled as providers in the Iowa Medicaid program.

b. Staff training.

(1) Within one month of employment, staff members must receive the following training:

1. Orientation regarding the agency's mission, policies, and procedures;

2. HCBS philosophy and outcomes for rights and dignity for the children's mental health waiver.

(2) Within three months of employment, staff members must receive the following training:

1. Introduction to serious emotional disturbance and service provision;

2. Confidentiality;

3. Provision of medication;

4. Identification and reporting of consumer and dependent adult abuse;

5. Incident reporting;

6. Documentation of service provision; and

7. Appropriate restraint techniques.

(3) Until a staff member receives the training identified in subparagraph (2), the staff member shall not provide any direct service without the presence of experienced staff.

(4) Within the first year of employment, staff members must complete 24 hours of training in children's mental health issues.

(5) During each consecutive year of employment, staff members must complete 12 hours of training in children's mental health issues.

c. Consumer-specific information. The following information must be written, current, and accessible to the respite provider during service provision:

(1) The consumer's legal and preferred name, birth date, and age, and the address and telephone number of the consumer's usual residence.

(2) The consumer's typical schedule.

(3) The consumer's preferences in activities and foods or any other special concerns.

(4) The consumer's crisis intervention plan.

d. Written notification of injury. The respite provider shall inform the parent, guardian or usual caregiver that written notification must be given to the respite provider of any recent injuries or illnesses that have occurred before respite provision.

e. Medication dispensing. Respite providers shall develop policies and procedures for the dispensing, storage, and recording of all prescription and nonprescription medications administered during respite provision. Home health agencies must follow Medicare regulations regarding medication dispensing.

f. Support of crisis intervention plan. A respite provider shall develop and implement policies and procedures for maintaining the integrity of the individualized crisis intervention plan as defined in 441—24.1(225C) that is developed by each consumer's interdisciplinary team. The policies and procedures shall address:

(1) Sharing with the case manager and the interdisciplinary team information pertinent to the development of the consumer's crisis intervention plan.

(2) Training staff before service provision, in cooperation with the consumer's parents or legal guardian, regarding the consumer's individual mental health needs and individualized supports as identified in the crisis intervention plan.

(3) Ensuring that all staff have access to a written copy of the most current crisis intervention plan during service provision.

(4) Ensuring that the plan contains current and accurate information by updating the case manager within 24 hours regarding any circumstance or issue that would have an impact on the consumer's mental health or change the consumer's crisis intervention plan.

g. Service documentation. Documentation of respite care shall be made available to the consumer, parents, guardian, or usual caregiver upon request.

h. Capacity. A facility providing respite care under this subrule shall not exceed the facility's licensed capacity, and services shall be provided in a location and for a duration consistent with the facility's licensure.

i. Service provided outside home or facility. Respite care provided outside the consumer's home or the facility covered by the licensure, certification, accreditation, or contract must be approved by the parents, guardian or usual caregiver and the interdisciplinary team pursuant to 441—83.127(249A) and must be consistent with the way the location is used by the general public. Respite care in these locations shall not exceed 72 continuous hours.

This rule is intended to implement 2005 Iowa Acts, House File 841, section 13, and House File 538, section 3.

ITEM 3. Amend rule 441—78.33(249A) as follows:

Amend the introductory paragraph as follows:

441—78.33(249A) Case management services. Payment on a monthly payment per enrollee basis will be approved for the case management functions required in 441—Chapter 90 ~~or 441—Chapter 186~~.

Amend subrule **78.33(1)**, paragraph **"c,"** as follows:

c. Recipients under 18 years of age receiving HCBS MR waiver *or HCBS children's mental health waiver* services.

Rescind and reserve subrule **78.33(3)**.

ITEM 4. Adopt **new** rule 441—78.52(249A) as follows:

441—78.52(249A) HCBS children's mental health waiver services. Payment will be approved for the following services to consumers eligible for the HCBS children's mental health waiver as established in 441—Chapter 83. All services shall be provided in accordance with the general standards in subrule 78.52(1), as well as standards provided specific to each waiver service in subrules 78.52(2) through 78.52(5).

78.52(1) General service standards. All children's mental health waiver services shall be provided in accordance with the following standards:

a. Services must be based on the consumer's needs as identified in the consumer's service plan developed pursuant to 441—83.127(249A).

(1) Services must be delivered in the least restrictive environment consistent with the consumer's needs.

(2) Services must include the applicable and necessary instruction, supervision, assistance and support as required by the consumer to achieve the consumer's goals.

b. Payment for services shall be made only upon departmental approval of the services. Waiver services provided before approval of the consumer's eligibility for the waiver shall not be paid.

c. Services or service components must not be duplicative.

(1) Reimbursement shall not be available under the waiver for any services that the consumer may obtain through the Iowa Medicaid program outside of the waiver.

(2) Reimbursement shall not be available under the waiver for any services that the consumer may obtain through natural supports or community resources.

(3) Services may not be simultaneously reimbursed for the same period as nonwaiver Medicaid services or other Medicaid waiver services.

(4) Costs for waiver services are not reimbursable while the consumer is in a medical institution.

78.52(2) Environmental modifications, adaptive devices, and therapeutic resources. Environmental modifications, adaptive devices, and therapeutic resources include items installed or used within the consumer's home that address specific, documented health, mental health, or safety concerns. A unit of service is one modification, device, or resource.

78.52(3) Family and community support services. Family and community support services shall support the consumer and the consumer's family by the development and implementation of strategies and interventions that will result in the reduction of stress and depression and will increase the consumer's and the family's social and emotional strength.

a. Dependent on the needs of the consumer and the consumer's family members individually or collectively, family and community support services may be provided to the consumer, to the consumer's family members, or to the consumer and the family members as a family unit.

b. Family and community support services shall be provided under the recommendation of the mental health professionals that are included on the consumer's interdisciplinary team pursuant to 441—83.127(249A).

c. Family and community support services shall incorporate recommended support interventions and activities, which may include the following:

(1) Developing and maintaining a crisis support network for the consumer and for the consumer's family.

(2) Modeling and coaching effective coping strategies for the consumer's family members.

(3) Building resilience to the stigma of serious emotional disturbance for the consumer and the family.

(4) Reducing the stigma of serious emotional disturbance by the development of relationships with peers and community members.

(5) Modeling and coaching the strategies and interventions identified in the consumer's crisis intervention plan as defined in 441—24.1(225C) for life situations with the consumer's family and in the community.

(6) Developing medication management skills.

(7) Developing personal hygiene and grooming skills that contribute to the consumer's positive self-image.

d. Family and community support services may include an amount not to exceed $1570 per consumer per year for transportation within the community if the interdisciplinary team identifies the transportation as a support need and if the transportation cannot be provided by the consumer, the consumer's family or legal guardian, or community resources.

e. The following components are specifically excluded from family and community support services:

(1) Vocational services;

(2) Prevocational services;

(3) Supported employment services;

(4) Room and board;

(5) Academic services;

(6) General supervision and consumer care.

f. A unit of family and community support services is one hour.

78.52(4) In-home family therapy. In-home family therapy provides skilled therapeutic services to the consumer's family, addressing fragmented family relationships resulting from the effects of the consumer's mental illness. The goal of in-home family therapy is to maintain a cohesive family unit. A unit of in-home family therapy service is one hour. Any period less than one hour shall be prorated.

78.52(5) Respite care services. Respite care services are services provided to the consumer that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The "usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

a. Respite care shall not be provided to consumers during the hours in which the usual caregiver is employed, except when the consumer is attending a camp.

b. The usual caregiver cannot be absent from the home for more than 14 consecutive days during respite provision.

c. Staff-to-consumer ratios shall be appropriate to the individual needs of the consumer as determined by the consumer's interdisciplinary team. The team shall determine the type of respite care to be provided according to these definitions:

(1) Basic individual respite is provided on a ratio of one staff to one consumer. The consumer does not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(2) Specialized respite is provided on a ratio of one or more nursing staff to one consumer. The consumer has specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(3) Group respite is provided on a ratio of one staff to two or more consumers receiving respite. These consumers do not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

d. Respite services provided for a period exceeding 24 consecutive hours to three or more consumers who require nursing care because of a mental or physical condition must be provided by a health care facility licensed under Iowa Code chapter 135C.

e. Respite services provided outside the consumer's home shall not be reimbursable if the living unit where respite care is provided is reserved for another person on a temporary leave of absence.

f. A unit of service is one hour.

This rule is intended to implement 2005 Iowa Acts, House File 841, section 13, and House File 538, section 3.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend rule **441—79.1(249A)** as follows:

Amend subrule **79.1(2)**, provider category "HCBS waiver service providers," by adopting **new** numbered paragraphs "27," "28," and "29" as follows:

Provider category	Basis of reimbursement	Upper limit
27. Environmental modifications, adaptive devices, and therapeutic resources	Fee schedule	$6,000 per year
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	$33.62 per hour
29. In-home family therapy	Fee schedule	$90 per hour

Amend subrule **79.1(15)** as follows:

Amend the introductory paragraph as follows:

79.1(15) HCBS retrospectively limited prospective rates. This methodology applies to reimbursement for HCBS supported community living*; HCBS family* and *community support services; HCBS* supported employment~~,~~*;* HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency~~, and~~*;* HCBS respite when provided by nonfacility providers, camps, home care agencies, or providers of residential-based supported community living~~,~~*;* and HCBS group respite provided by home health agencies.

Amend paragraph **"a,"** subparagraph **(1)**, as follows:

(1) Providers shall submit cost reports for each waiver service provided using Form 470-0664, Financial and Statistical Report for Purchase of Service, and Form 470-3449, Supplemental Schedule. The cost reporting period is from July 1 to June 30. The completed cost reports shall be submitted to ~~Ryun, Givens, Wenthe, and Company, 1601 48th Street, Suite 150, West Des Moines, Iowa 50266-6722~~ *the IME Provider Audits and Rate-Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315*, by September 30 of each year.

Amend paragraph **"b"** as follows:

Amend subparagraph **(5)** as follows:

(5) Consumer ~~travel and~~ transportation, consumer consulting, consumer instruction, consumer environmental modification and repairs and consumer environmental furnishings shall not exceed $1,570 per consumer per year *for supported community living services*.

Adopt **new** subparagraph **(8)** as follows:

(8) Transportation reimbursement shall not exceed $1570 per child per year for family and community support services.

ITEM 6. Amend subrul**e 83.102(5)**, paragraph **"a,"** subparagraph **(2)**, as follows:

(2) For current Medicaid recipients, the county department office shall contact the bureau by the end of the second working day after receipt of Form ~~470-3501~~ *470-3502*, Physical Disability Waiver Assessment Tool, with the choice of HCBS waiver indicated by the signature of the consumer or a written request signed and dated by the consumer.

ITEM 7. Reserve rules **441—83.112** to **83.120**.

ITEM 8. Amend **441—Chapter 83** by adopting **new** Division VII as follows:

DIVISION VII—HCBS CHILDREN'S MENTAL HEALTH WAIVER SERVICES

441—83.121(249A) Definitions.

"Assessment" means the review of the consumer's current functioning in regard to the consumer's situation, needs, abilities, desires, and goals.

"CMS" means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

"Consumer" means an individual up to the age of 18 who is included in a Medicaid coverage group listed in 441—75.1(249A) and is a recipient of children's mental health waiver services.

"Deeming" means considering parental or spousal income or resources as income or resources of a consumer in determining eligibility for a consumer according to Supplemental Security Income program guidelines.

"Department" means the Iowa department of human services.

"Guardian" means a parent of a consumer or a legal guardian appointed by the court.

"HCBS" means home- and community-based services provided under a Medicaid waiver.

"IME" means the Iowa Medicaid enterprise.

"IME medical services unit" means the contracted entity in the Iowa Medicaid enterprise that determines level of care for consumers initially applying for or continuing to receive children's mental health waiver services.

"Interdisciplinary team" means the consumer, the consumer's family, and persons of varied professional and nonprofessional backgrounds with knowledge of the consumer's needs, as designated by the consumer and the consumer's family, who meet to develop a service plan based on the individualized needs of the consumer.

"ISIS" means the department's individualized services information system.

"Local office" means a department of human services office as described in 441—subrule 1.4(2).

"Medical institution" means a nursing facility, an intermediate care facility for the mentally retarded, a psychiatric hospital or psychiatric medical institution for children, or a state mental health institute that has been approved as a Medicaid vendor.

"Mental health professional" means a person who meets all of the following conditions:

1. Holds at least a master's degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and

2. Holds a current Iowa license when required by the Iowa professional licensure laws (such as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker); and

3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and service needs and in providing mental health services.

"Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria for the disorder

specified by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), published by the American Psychiatric Association; and (2) has resulted in a functional impairment that substantially interferes with or limits a consumer's role or functioning in family, school, or community activities. "Serious emotional disturbance" shall not include developmental disorders, substance-related disorders, or conditions or problems classified in DSM-IV-TR as "other conditions that may be a focus of clinical attention" (V codes), unless these conditions co-occur with another diagnosable serious emotional disturbance.

"Service plan" means a written, consumer-centered, outcome-based plan of services developed by the consumer's interdisciplinary team that addresses all relevant services and supports being provided. The service plan may involve more than one provider.

"Targeted case management" means Medicaid case management services accredited under 441—Chapter 24 and provided according to 441—Chapter 90 for consumers eligible for the children's mental health waiver.

"Waiver year" for the children's mental health waiver means a 12-month period commencing on July 1 of each year.

441—83.122(249A) Eligibility. To be eligible for children's mental health waiver services, a consumer must meet all of the following requirements:

83.122(1) Age. The consumer must be under 18 years of age.

83.122(2) Diagnosis. The consumer must be diagnosed with a serious emotional disturbance.

a. Initial certification. For initial application to the HCBS children's mental health waiver program, psychological documentation that substantiates a mental health diagnosis of serious emotional disturbance as determined by a mental health professional must be current within the 12-month period before the application date.

b. Ongoing certification. A mental health professional must complete an annual evaluation that substantiates a mental health diagnosis of serious emotional disturbance.

83.122(3) Level of care. The consumer must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit shall certify the consumer's level of care annually based on Form 470-4211, Children's Mental Health Waiver Assessment.

83.122(4) Financial eligibility. The consumer must be eligible for Medicaid as follows:

a. Be eligible for Medicaid under an SSI, SSI-related, FMAP, or FMAP-related coverage group; or

b. Be eligible under the special income level (300 percent) coverage group; or

c. Become eligible through application of the institutional deeming rules; or

d. Would be eligible for Medicaid if in a medical institution. For this purpose, deeming of parental or spousal income or resources ceases in the month after the month of application.

83.122(5) Choice of program. The consumer must choose HCBS children's mental health waiver services over institutional care, as indicated by the signature of the consumer's parent or legal guardian on Form 470-4211, Children's Mental Health Waiver Assessment.

83.122(6) Need for service. The consumer must have service needs that can be met under the children's mental health waiver program, as documented in the service plan developed in accordance with rule 441—83.12(249A).

a. The consumer must be a recipient of targeted case management services or be identified to receive targeted case management services immediately following program enrollment.

b. The total cost of children's mental health waiver services needed to meet the consumer's needs may not exceed $1765 per month.

c. At a minimum, each consumer must receive one billable unit of a children's mental health waiver service per calendar quarter.

d. A consumer may not be the recipient of children's mental health waiver services and be the recipient of rehabilitative treatment services under 441—Chapter 185.

e. A consumer may be enrolled in only one HCBS waiver program at a time.

441—83.123(249A) Application. The Medicaid application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed for an application for HCBS children's mental health waiver services. For the period July 1, 2005, through October 1, 2005, only, priority enrollment shall be given to children served on or before June 30, 2005, through the department's foster care system.

83.123(1) Program limit. The number of persons who may be approved for the HCBS children's mental health waiver shall be subject to the number of consumers to be served as set forth in the federally approved HCBS children's mental health waiver. When the number of applicants exceeds the number of consumers specified in the approved waiver, the consumer's application shall be rejected and the consumer's name shall be placed on a waiting list.

a. The local office shall contact the bureau of long-term care through ISIS for all applicants for the waiver to determine if a payment slot is available.

(1) For consumers not currently Medicaid-eligible, the local office shall contact the bureau of long-term care by the end of the fifth working day after receipt of a completed Form 470-2297, Health Services Application.

(2) For consumers who are currently Medicaid-eligible, the local office shall contact the bureau of long-term care by the end of the fifth working day after receipt of either Form 470-4211, Children's Mental Health Waiver Assessment, with HCBS waiver choice indicated by signature of the consumer's parent or legal guardian; or a written request signed and dated by the consumer's parent or legal guardian.

b. When the bureau of long-term care confirms that a payment slot is available, the local office shall continue to process the application through ISIS.

(1) The department shall hold the payment slot for the consumer as long as reasonable efforts are being made to arrange services and the consumer has not been determined to be ineligible for the program.

(2) If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next consumer on the waiting list, if applicable. The consumer must reapply for a new slot.

c. If no payment slot is available, the bureau of long-term care shall enter the names of persons on a waiting list according to the following:

(1) The names of consumers not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927, Health Services Application, is submitted on or after July 1, 2005, and date-stamped in the local office.

(2) The names of consumers currently eligible for Medicaid shall be added to the waiting list on the date Form

470-4211 or a written request as specified in 83.123(2)"a"(2) is date-stamped in the local office.

(3) In the event that more than one application is received at one time, the names of consumers shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

d. Consumers whose names are on the waiting list shall be contacted to reapply as slots become available, based on the order of the waiting list, so that the number of approved consumers on the program is maintained.

(1) The bureau of long-term care shall contact the local office when a slot becomes available.

(2) Once a payment slot is assigned, the local office shall give written notice to the consumer within five working days.

(3) The department shall hold the payment slot for 30 days for the consumer to file a new application.

(4) If an application has not been filed within 30 days, the slot shall revert for use by the next consumer on the waiting list, if applicable. The consumer originally assigned the slot must reapply for a new slot.

e. The local office shall notify the bureau of long-term care within five working days of the receipt of an application and of any action or withdrawal of an application.

83.123(2) Approval of application.

a. Time limit. Applications for the HCBS children's mental health waiver program shall be processed within 30 days unless one or more of the following conditions exist:

(1) An application has been filed and is pending for federal Supplemental Security Income benefits.

(2) The application is pending because the department has not received information for a reason that is beyond the control of the consumer or the department.

(3) The application is pending because the assessment or the service plan has not been completed. When a determination is not completed 90 days after the date of application due to the lack of a service plan, the application shall be denied.

b. Notice of decisions. The department shall mail or give decisions to the applicant on the dates when eligibility and level-of-care determinations and the consumer's service plan are completed.

83.123(3) Effective date of eligibility. The effective date of a consumer's eligibility for children's mental health waiver services shall be the first date that all of the following conditions exist:

a. All eligibility requirements are met;

b. Eligibility and level-of-care determinations have been made; and

c. The service plan has been completed.

441—83.124(249A) Financial participation. A consumer must contribute to the cost of children's mental health waiver services to the extent of the consumer's total income less 300 percent of the maximum monthly payment for one person under the federal Supplemental Security Income (SSI) program.

441—83.125(249A) Redetermination. The department shall redetermine a consumer's eligibility for the children's mental health waiver at least once every 12 months or when there is significant change in the consumer's situation or condition.

83.125(1) Eligibility review. Every 12 months, the local office shall review a consumer's eligibility in accordance with procedures in rule 441—76.7(249A). The review shall verify:

a. Continuing eligibility factors as specified in 441—83.122(249A).

b. The existence of a current service plan meeting the requirements listed in rule 441—83.125(249A).

83.125(2) Continuation of eligibility. A consumer's waiver eligibility shall continue until one of the following conditions occurs.

a. The consumer fails to meet eligibility criteria listed in rule 441—83.122(249A**)**.

b. The consumer is an inpatient of a medical institution for 30 or more consecutive days.

(1) After the consumer has spent 30 consecutive days in a medical institution, the local office shall terminate the consumer's waiver eligibility and review the consumer for eligibility under other Medicaid coverage groups. The local office shall notify the consumer and the consumer's parents or legal guardian through Form 470-0602, Notice of Decision.

(2) If the consumer returns home after 30 consecutive days but no more than 60 days, the consumer must reapply for children's mental health waiver services, and the IME medical services unit must redetermine the consumer's level of care.

c. The consumer does not reside at the consumer's natural home for a period of 60 consecutive days. After the consumer has been out of the home for 60 consecutive days, the local office shall terminate the consumer's waiver eligibility and review the consumer for eligibility under other Medicaid coverage groups. The local office shall notify the consumer and the consumer's parents or legal guardian through Form 470-0602, Notice of Decision.

83.125(3) Payment slot. When a consumer loses waiver eligibility, the consumer's assigned payment slot shall revert for use to the next consumer on the waiting list.

441—83.126(249A) Allowable services. Services allowable under the children's mental health waiver shall be provided as set forth in rule 441—78.52(249A) and shall include:

1. Environmental modifications, adaptive devices and therapeutic resources;
2. Family and community support services;
3. In-home family therapy; and
4. Respite care.

441—83.127(249A) Service plan. The consumer's case manager shall prepare an individualized service plan for each consumer that meets the requirements set for case plans in rule 441—130.7(234).

83.127(1) The service plan shall be developed through an interdisciplinary team process.

83.127(2) The service plan shall be developed annually or when there is significant change in the consumer's situation or condition.

83.127(3) The service plan shall be based on information in Form 470-4211, Children's Mental Health Waiver Assessment.

83.127(4) The service plan shall specify the type and frequency of the waiver services and the providers that will deliver the services.

83.127(5) The service plan shall identify and justify any restriction of the consumer's rights.

441—83.128(249A) Adverse service actions.

83.128(1) Denial. An application for children's mental health waiver services shall be denied when the department determines that:

a. The consumer is not eligible for or in need of waiver services.

b. Needed services are not available or received from qualified providers.

c. Service needs exceed the limit on aggregate monthly costs established in 83.122(6)"c" or are not met by the services provided.

83.128(2) Termination. A consumer's participation in the children's mental health waiver program may be terminated when the department determines that:

a. The provisions of 441—paragraph 130.5(2)"a," "b," "c," "g," or "h" apply.

b. The costs of the children's mental health waiver services for the consumer exceed the aggregate monthly costs established in 83.122(6)"c."

c. The consumer receives care in a hospital, nursing facility, psychiatric hospital serving children under the age of 21, or psychiatric medical institution for children for 30 days in any one stay.

d. The physical or mental condition of the consumer requires more care than can be provided in the consumer's own home, as determined by the consumer's case manager.

e. Service providers are not available.

83.128(3) Reduction. Reduction of services shall apply as specified in 441—paragraphs 130.5(3)"a" and "b."

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). An applicant or consumer may obtain a review of the IME level-of-care determination by sending a letter requesting a review to the IME Medical Services Unit, P.O. Box 36478, Des Moines, Iowa 50315. If dissatisfied with the IME review decision, the applicant or consumer may file an appeal with the department in accordance with 441—Chapter 7.

These rules are intended to implement 2005 Iowa Acts, House File 841, section 13, and House File 538, section 3.

ITEM 9. Amend **441—Chapter 90**, preamble, as follows:

PREAMBLE

These rules define and structure medical assistance case management services provided in accordance with Iowa Code section 225C.20 for consumers with mental retardation (MR), chronic mental illness (CMI), or a developmental disability (DD) *and consumers eligible for the HCBS children's mental health waiver.* Provider accreditation standards are set forth in 441—Chapter 24.

~~MR/CMI/DD case~~ *Case* management is a method to manage multiple resources effectively for the benefit of Medicaid consumers. The service is designed to help consumers ~~with MR, CMI or DD~~ gain access to appropriate and necessary medical services and interrelated social and educational services. ~~MR/CMI/DD case~~ *Case* management ensures that necessary evaluations are conducted; individual service and treatment plans are developed, implemented, and monitored; and reassessment of consumer needs and services occurs on an ongoing and regular basis.

ITEM 10. Amend rule **441—90.1(249A)** as follows:

Amend the definitions of "MR/CMI/DD case management" and "targeted population":

"MR/CMI/DD case management" means a service provided under the medical assistance program designed to assist eligible individuals with mental retardation, chronic mental illness or developmental disabilities *and children eligible for the HCBS children's mental health waiver* in gaining access to appropriate and necessary medical services and interrelated social and educational services. MR/CMI/DD case management is intended to manage multiple resources and to ensure that necessary evaluations are conducted; that individual service and treatment plans are developed, implemented, and monitored; and that reassessment of consumer needs and services occurs on an ongoing and regularly scheduled basis. MR/CMI/DD case management does not include direct services.

"Targeted population" means people who meet one of the following criteria:

1. An adult *who is* identified with a primary diagnosis of mental retardation, chronic mental illness or developmental disability; or

2. A child who is eligible to receive HCBS mental retardation waiver *or HCBS children's mental health waiver* services *according to 441—Chapter 83*; or

3. A child who has a primary diagnosis of mental retardation or developmental disability, resides in a child welfare decategorization county, and is likely to become eligible to receive HCBS mental retardation waiver services.

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ARC 4577B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 101.1, the Department of Public Safety hereby amends Chapter 51, "Flammable and Combustible Liquids," Iowa Administrative Code.

Iowa Code chapter 101 charges the State Fire Marshal with establishing standards for the transportation, storage, handling, and use of flammable liquids, liquefied petroleum gases, and liquefied natural gases. Rules covering all of these subjects are contained in 661—Chapter 51 of the Iowa Administrative Code. Subrule 51.202(1) establishes the requirements for dispensing of motor vehicle fuel, and does so through adoption by reference of a standard published by the National Fire Protection Association, NFPA 30A, "Automotive and Marine Service Station Code," 2000 edition. The subrule currently amends the standard as published by the National Fire Protection Association by establishing requirements for clearances (distances from tanks) not included in the published standard.

The published standard generally requires that equipment used to dispense motor vehicle fuel be rated ("listed") by an independent testing laboratory as compatible with the fuel being dispensed. However, ethanol blend fuels with higher concentrations of ethanol than traditionally included (10 percent) in the blend have not been on the retail market long enough for retail dispensing equipment listed as compatible with blends with higher concentrations of ethanol to be generally available.

An ethanol blend with 85 percent ethanol is available for retail distribution in Iowa. To facilitate the retail sale of higher concentration ethanol blends, the amendment adopted here would allow the dispensing of these higher concentration blends using equipment listed for use in dispensing gasoline or the traditional ethanol blend (90 percent gasoline, 10 percent ethanol), until July 1, 2007, provided that (1) the manufacturer states that the equipment is "not incompatible"

with the higher concentration ethanol blend and (2) the manufacturer has initiated the process of seeking listing of the dispensing equipment by an independent testing laboratory.

This amendment was proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on August 17, 2005, as **ARC 4445B**. A public hearing on the proposed amendment was held on September 9, 2005. Comments were received at that hearing from the Iowa Renewable Fuels Association, the Iowa Corn Growers Association, and the Iowa Farm Bureau Federation. All of those commenting spoke in favor of the proposed amendment, while asking for several modifications to it.

In response to the comments received, modifications have been made in the amendment adopted here. Language has been added to clarify what is required of a manufacturer of dispensing equipment in order for the equipment to be used to dispense ethanol blend fuels with higher than a 10 percent concentration of ethanol prior to July 1, 2007. Language also has been added regarding requirements for retail establishments which were already dispensing ethanol blend fuels with higher than a 10 percent concentration of ethanol prior to August 1, 2005.

In order to facilitate the retail dispensing of ethanol blend fuels with concentrations of ethanol higher than the traditional 10 percent in as timely a manner as possible, the Department and the Fire Marshal are adopting this amendment through the Adopted and Filed Emergency After Notice procedure. Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of this amendment, 35 days after publication, should be waived and this amendment made effective October 1, 2005, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by enabling the retail dispensing of ethanol blend fuels of concentrations higher than 10 percent ethanol, which will make available cleaner burning fuels for vehicles fitted for use of these blends and contribute to increased availability of motor vehicle fuel in an environment in which petroleum products are in short supply and are selling at prices that have risen markedly in recent months.

This amendment is intended to implement Iowa Code section 101.5.

This amendment became effective on October 1, 2005.

The following amendment is adopted.

Amend subrule 51.202(1) as follows:

51.202(1) Except as allowed by rule 661—51.203(101), NFPA 30A, "Automotive and Marine Service Station Code," 2000 edition, is adopted by reference as the rules governing dispensing motor vehicle fuel into the fuel tanks of motor-driven vehicles, with the following amendments:

Delete subsection 4.3.2.7 and insert in lieu thereof the following:

4.3.2.7 Each tank having a capacity of not more than 6,000 gallons for motor vehicle fuel dispensing systems that is located at a commercial, industrial, governmental, or manufacturing establishment, and that is intended for fueling vehicles used in connection with the establishment shall be located at least:

(a) 40 feet from the nearest important building on the same property;

(b) 40 feet away from any property that is or may be built upon, including the opposite side of a public way;

(c) 100 feet away from any residence or place of assembly.

EXCEPTION: All distances may be reduced by 50 percent for tanks installed in vaults that comply with subsection 4.3.3 or are UL-listed aboveground double-walled tanks that have a two-hour fire-resistive rating and that comply with subsection 4.3.4 or 4.3.5.

Add the following new section:

6.9 Dispensing of E-blend.

6.9.1 Definitions.

"E-10" means a blend of petroleum and ethanol including no more than 10 percent ethanol intended for use as a motor vehicle fuel.

"E-blend" means a blend of petroleum and ethanol including more than 10 percent ethanol intended for use as a motor vehicle fuel.

6.9.2 Requirements for equipment dispensing E-blend prior to July 1, 2007.

Prior to July 1, 2007, E-blend may be dispensed from equipment listed for use with gasoline or E-10, provided that the equipment is fully in compliance with all requirements for use in dispensing gasoline or E-10 if the manufacturer states:

(1) That the equipment is, in the opinion of the manufacturer, not incompatible with E-blend, and

(2) The manufacturer has initiated the process of applying to an independent testing laboratory for listing of the equipment for use in dispensing E-blend.

"Manufacturer states" means that the manufacturer has provided a written statement, with reference to a particular type and model of equipment, signed by a responsible official on behalf of the manufacturer either to the retail outlet using the dispensing equipment or to the fire marshal. If the written statement is provided to a retail outlet, the written statement shall be retained in the files on the premises of the retail outlet and shall be available to personnel of the fire marshal division or the department of natural resources on request.

6.9.3 Retail outlets which had been dispensing E-blend prior to August 1, 2005.

A retail outlet which had been dispensing E-blend prior to August 1, 2005, may continue to do so until July 1, 2007, with existing equipment provided that:

(1) The dispensing equipment fully complies with the requirements established in NFPA 30A for dispensing E-10.

(2) The dispensing equipment has not been found by the manufacturer or an independent testing laboratory to be incompatible with the dispensing of E-blend.

6.9.4 Requirements for equipment dispensing E-blend on or after July 1, 2007.

On or after July 1, 2007, any equipment used to dispense E-blend shall be listed for dispensing E-blend.

[Filed Emergency After Notice 9/22/05, effective 10/1/05]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4572B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 1, "Department Organization," Iowa Administrative Code.

The purpose of these amendments is to implement section 2 of 2005 Iowa Acts, House File 776, signed by the Governor on April 22, 2005, and to provide for initial implementation of 2005 Iowa Acts, House File 839, signed by the Governor on April 29, 2005. Section 2 of 2005 Iowa Acts, House File 776, allows the Director of the Department of Administrative Services to appoint a person in the Department to serve as the Chief Information Officer of the state. 2005 Iowa Acts, House File 839, creates the Technology Governance Board in place of the Information Technology Council.

These amendments also reflect modification of the Department's mission statement. Part of the original mission statement has been used to develop a vision statement for the Department: to be a world-class organization that is customer-focused, innovative and efficient. The revised mission statement reflects the Department's move from a focus on implementing the organization to one of providing products and services to its customers. In addition, the mission statement reflects the Department's statutory authority, pursuant to Iowa Code section 8A.122, that provides for inclusion of other government entities as part of the Department's customer base.

These amendments were previously Adopted and Filed Emergency and published in the July 6, 2005, Iowa Administrative Bulletin as **ARC 4291B**. Notice of Intended Action to solicit comments on these amendments was published simultaneously as **ARC 4290B**. A public hearing was held on July 26, 2005. No one attended the public hearing, and no public comments were received. Rule 11—1.4(8A) has been revised to add recent organizational changes. State printing has moved from the General Services Enterprise to the Information Technology Enterprise, and the main organizational units of the enterprises are now called bureaus.

These amendments were adopted by the Department on September 21, 2005.

These amendments shall become effective on November 16, 2005.

These amendments are intended to implement Iowa Code sections 7E.1 through 7E.4, 8A.103, 8A.104, 8A.122, 17A.3 and 2005 Iowa Acts, House File 776 and House File 839.

The following amendments are adopted.

ITEM 1. Amend rule 11—1.1(8A) as follows:

11—1.1(8A) Creation and mission. The department of administrative services (DAS) ~~was~~ *is* established ~~by the 80th General Assembly in 2003 Iowa Acts, House File 534~~ *in Iowa Code chapter 8A*. The department ~~was created for the purpose of managing~~ *manages* and ~~coordinating~~ *coordinates* the major resources of state government, including the human, financial, physical and informational resources. The ~~mission of the~~ department ~~is~~ *was created* to implement a world-class, customer-focused organization that provides a complement of valued products and services to the internal customers of state government.

The mission of the department is to provide high-quality, affordable infrastructure products and services to its customers—Iowa state government and other government entities—in a manner that allows them to provide better service to the citizens of Iowa and to support the state of Iowa in achieving economic growth.

ITEM 2. Amend rule 11—1.4(8A) as follows:

11—1.4(8A) Administration of the department. In order to carry out the functions of the department, the following enterprises and ~~divisions~~ *bureaus* have been established:

1.4(1) General services enterprise. The mission of the general services enterprise is to act as the state's business agent to meet agencies' needs for quality, timely, reliable and cost-effective support services and provide a work environment that is healthy, safe, and well maintained. The chief operating officer, appointed by the director, heads the general services enterprise. The following ~~divisions~~ *bureaus* have been established within the general services enterprise:

a. Capitol complex maintenance. The capitol complex maintenance ~~division~~ *bureau* is responsible for the maintenance, appearance, and facility sanitation of the capitol complex buildings and grounds, including environmental control (heating, ventilation and cooling) and all support features including, but not limited to, parking lot maintenance, main electrical distribution, water supply, wastewater removal, on-site safety consultation, and major maintenance projects associated with the capitol complex.

b. Design and construction. The design and construction ~~division~~ *bureau* is responsible for vertical infrastructure management; building and monument restoration; management of leases and office space on and off the capitol complex; assignment of office space on the capitol complex; utilities management; and management of capital projects, including architectural, engineering, and construction management services for state agencies except for the board of regents, the department of transportation, the national guard, the natural resource commission and the Iowa public employees' retirement system.

c. Fleet~~,~~ *and* mail ~~and print~~. The fleet~~,~~ *and* mail ~~and print division~~ *bureau* is responsible for the management of vehicular risk and travel requirements for state agencies not exempted by law~~,~~ *and* for the processing and delivering of mail for state agencies on the capitol complex and in the Des Moines metropolitan area~~, and for printing and printing procurement services~~.

d. Service delivery. The service delivery ~~division~~ *bureau* is responsible for the following functions for the enterprise: parking and building access, collection of fines and other payments, coordination of special events, general information, and work requests for the capitol complex; statewide purchasing and electronic procurement, including managing procurement of commodities, equipment and services for all state agencies not exempted by law; and administration of surplus property.

1.4(2) Human resources enterprise. The human resources enterprise is responsible for human resource management in the executive branch of Iowa state government and provides limited services to the judicial and legislative branches. The mission of the human resources enterprise is to support state agencies in their delivery of services to the people of Iowa by providing programs that recruit, develop, and retain a diverse and qualified workforce, and to administer responsible employee benefits programs for the members and their beneficiaries. The director appoints the chief operating officer of

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

the enterprise. The following ~~divisions~~ *bureaus* have been established within the human resources enterprise:

a. Benefits. The benefits ~~division~~ *bureau* administers and coordinates the provision of health, dental, life, and disability insurance programs; employee leave programs; workers' compensation, return to work, and loss control and safety programs; 457 deferred compensation; 403(b) tax-sheltered annuity and 401(a) employer match programs; unemployment insurance; *and* flexible spending and premium conversion programs for state employees.

b. Employment. The employment ~~division~~ *bureau* provides application, referral, recruitment, selection, EEO/AA and diversity services related to state employment; administration of the state classification and compensation programs; and audit of personnel and payroll transactions.

c. Program delivery services. The program delivery services ~~division~~ *bureau* is responsible for employment relations between the state and the certified employee representative; provides consultative services to state departments, boards, and commissions on human resource program matters; provides organization and employee development services including workforce planning and performance evaluation; and represents the state in contested case matters regarding such programs.

1.4(3) Information technology enterprise. The mission of the information technology enterprise is to provide high-quality, customer-focused information technology services and business solutions to government and to citizens. The director appoints the *chief information officer for the state, who also serves as the* chief operating officer of the enterprise. The following ~~divisions~~ *bureaus* have been established within the information technology enterprise:

a. Application and E-government services. The application and E-government services ~~division~~ *bureau* is responsible for support of departmental information technology services; providing software applications development, support, and training; and providing advice and assistance in developing and supporting business applications throughout state government.

b. Infrastructure services. The infrastructure services ~~division~~ *bureau* is responsible for providing server systems, including mainframe and other server operations, ~~and~~ desktop support, *printing and printing procurement services*.

c. No change.

d. Advisory groups.

(1) Technology governance board. The technology governance board operates pursuant to 2005 Iowa Acts, House File 839.

(2) No change.

1.4(4) No change.

1.4(5) Central administration.

a. Director's office. The director is the chief executive officer for the department ~~and the chief information officer for the state~~. The director's central administration area provides support to the director and to the governmental and business operations of the department and its enterprises. The following functions are included in this area: general counsel; legislative liaison; rules administrator; strategic, performance, and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development~~, including enterprise information technology standards~~.

b. and c. No change.

1.4(6) No change.

ITEM 3. Amend the implementation sentence after rule **11—1.4(8A)** as follows:

These rules are intended to implement Iowa Code chapter 8A and sections *7E.1 through* 7E.5 and 17A.3, *and 2005 Iowa Acts, House File 776 and House File 839*.

[Filed 9/22/05, effective 11/16/05]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4558B

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 2, "Registration," Iowa Administrative Code.

The amendments amend the definition for "inactive" and adopt a new definition for "retired"; provide a process by which a registrant may renew the architecture registration as inactive; and establish a fee.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 4390B** on August 3, 2005. The amendments are identical to those published under Notice.

The Board approved the amendments on September 13, 2005.

These amendments will become effective November 16, 2005.

These amendments are intended to implement Iowa Code chapters 17A and 544A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.1, 2.5 to 2.9] is being omitted. These amendments are identical to those published under Notice as **ARC 4390B**, IAB 8/3/05.

[Filed 9/20/05, effective 11/16/05]
[Published 10/12/05]

[For replacement pages for IAC, see IAC Supplement 10/12/05.]

ARC 4557B

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 2, "Registration," Iowa Administrative Code.

The amendment to Chapter 2 clarifies the Board's adoption of the National Council of Architectural Registration Board's (NCARB) rolling clock which limits the time al-

lowed to successfully complete all sections of the Architecture Registration Examination.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 4282B** on July 6, 2005. The amendment is identical to that published under Notice.

The Board approved the amendment on September 13, 2005.

This amendment will become effective November 16, 2005.

This amendment is intended to implement Iowa Code chapters 17A and 544A.

The following amendment is adopted.

Amend subrule 2.3(3) as follows:

2.3(3) To qualify for registration, all applicants shall pass all divisions of the ARE prepared and provided by NCARB. Applicants who have previously passed any portion of formerly required NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB. ~~Divisions of the examination may be passed or failed separately in accordance with procedures established by NCARB.~~ *Applicants who have passed one or more but not all divisions of the ARE by January 1, 2006, shall have five years to pass all remaining divisions. A passing grade for any remaining division shall be valid for five years, after which time the division must be retaken if all remaining divisions have not been passed. The rolling five-year period shall commence after January 1, 2006, on the date when the first passed division is administered. Applicants who have passed no divisions of the ARE by January 1, 2006, shall be governed by the above rolling five-year requirement. The rolling five-year period shall commence on the date when the first passed division is administered.*

[Filed 9/20/05, effective 11/16/05]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4567B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 3, "Application and Renewal Process," and Chapter 4, "Engineering Licensure," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 8, 2005, as **ARC 4218B**. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to clarify the application process for the Fundamentals of Engineering examination; change the application due dates for the Fundamentals of Land Surveying, Principles and Practice of Land Surveying, and Principles and Practice of Engineering examinations; remove the requirement that notification of license expiration be sent by certified mail; and clarify the terms "subprofessional work" and "professional work" for purposes of providing work experience information on the professional engineering examination application.

Waiver of these rules may be sought pursuant to 193—Chapter 5.

These amendments were adopted by the Board on September 8, 2005.

These amendments will become effective November 16, 2005.

These amendments are intended to implement Iowa Code sections 542B.6, 542B.13, 542B.14, 542B.15 and 542B.17.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [3.2, 3.4(4), 4.1(7)"c"] is being omitted. These amendments are identical to those published under Notice as **ARC 4218B**, IAB 6/8/05.

[Filed 9/22/05, effective 11/16/05]
[Published 10/12/05]

[For replacement pages for IAC, see IAC Supplement 10/12/05.]

ARC 4578B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 100.35, the Iowa Department of Public Safety hereby amends Chapter 5, "State Fire Marshal," and adopts new Chapter 231, "Manufacturing, Storage, Handling, and Use of Explosive Materials," Iowa Administrative Code.

Iowa Code section 101A.5 requires the State Fire Marshal to adopt administrative rules "pertaining to the manufacture, transportation, storage, possession, and use of explosive materials." Currently, rules of the State Fire Marshal adopt by reference the 1992 edition of National Fire Protection Association (NFPA) Standard 495, "Explosive Materials Code." The 1992 edition of the Explosive Materials Code has been superseded by two later editions, the latest of which is the 2001 edition. These amendments update the adoption by reference of the Explosive Materials Code to the latest edition published by the National Fire Protection Association.

The 2001 edition of NFPA 495 contains a chapter regulating blasting which occurs in proximity to "any dwelling, public building, school, church, or commercial or institutional building," and there is no parallel in the 1992 standard. The safety advantages of compliance with these requirements is such that the Fire Marshal determined that immediate adoption of this chapter from the 2001 standard is appropriate. Chapter 10 of the 2001 edition of National Fire Protection Association Standard 495 was adopted through emergency rule-making procedures effective March 1, 2005, and published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4056B**.

A Notice of Intended Action proposing to update all provisions of the rules of the Fire Marshal concerning the manufacture, transportation, storage, possession, and use of explosive materials was published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4057B**. A public hearing on these proposed amendments was held on April 8, 2005. The only comments received were presented on behalf of the Iowa Limestone Association, which requested the deletion of several provisions of the 2001 edition of the Explosive Materials Code on the grounds that they are not rele-

vant to the use of explosive materials in Iowa or would be impractical to implement. The rules as adopted here differ from the proposed rules in the Notice of Intended Action in that portions of Chapter 4, "Security and Safety of Explosive Materials," of NFPA 495 are amended. These amendments delete provisions of the Explosive Materials Code which do not apply under Iowa law or which may compromise the security of explosive storage facilities and add language regarding permits to use explosives, which are issued by local authorities under Iowa Code section 101A.3, provision of information regarding location of explosives, and security of explosives. Also, the adopted provisions will be located in a new chapter of the Iowa Administrative Code, 661—Chapter 231, which is part of a renumbering of all of the rules of the Iowa Department of Public Safety to make them more understandable and accessible to persons subject to the rules and members of the public.

These amendments are intended to implement Iowa Code section 101A.5.

These amendments will become effective on January 1, 2006.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **661—5.850(101A)**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 231
MANUFACTURING, STORAGE, HANDLING, AND USE OF EXPLOSIVE MATERIALS

NOTE: Any person who purchases, possesses, transports, stores, or uses explosive materials must comply with all applicable federal laws and regulations as well as with Iowa Code chapter 101A and this chapter.

661—231.1(101A) Explosive materials. NFPA 495, "Explosive Materials Code," 2001 edition, is hereby adopted by reference as the rules governing the manufacture, transportation, storage, and use of explosive materials in the state of Iowa, with the following amendments:

Delete the phrase "authority having jurisdiction" wherever it occurs and insert in lieu thereof the phrase "fire marshal."

Delete the phrases "issuing authority" and "permit-issuing authority" wherever they occur and insert in lieu thereof the phrase "fire marshal."

Amend Section 1.3 as follows:

1.3 Equivalency.

Nothing in this code is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed by this code. Any request for approval to use systems, methods, or devices other than those specified in this chapter shall be submitted to the fire marshal as a request for a waiver of a rule as provided by rule 661—5.15(17A,100).

Delete Sections 4.1.5, 4.1.6, 4.1.9, 4.1.9.1, 4.2.3, 4.3 through 4.3.2, 4.4 through 4.4.5, 4.5.2, 4.5.3, 4.6 through 4.6.3, 4.7 through 4.7.4, 4.8.6, 4.9.2, and 4.9.3.

Amend Sections 4.2, 4.2.1, 4.2.2, 4.5, 4.5.1, 4.8.1, 4.8.3, 4.8.4, and 4.9.1 by deleting the word "permit" wherever it occurs and inserting in lieu thereof the word "license" and by deleting the word "permits" wherever it occurs and inserting in lieu thereof the word "licenses."

Add the following new section:

4.2.4 A person who has a current, valid permit to use explosives, which has been issued by a sheriff or police chief pursuant to Iowa Code section 101A.3, may purchase, possess, transport, store, and use explosive materials within the jurisdiction of the sheriff or police chief who issued the permit. Any purchase, possession, transportation, storage, or detonation of explosive materials by a person with a current, valid permit that has been issued by a sheriff or police chief is strictly limited to the conditions expressly stated in the permit. Possession of a permit creates no obligation on the part of any vendor of explosive materials to supply such materials to the holder of the permit.

Amend Section 8.4.6 to read as follows:

8.4.6 Any person who stores explosive materials shall notify the local fire department having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, magazine capacity, and location of each site where such explosive materials are stored. Such notification shall be made orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced. A fire department which has received information pursuant to this section may redisseminate the information to the state fire marshal, another fire department which is responding to a fire or other incident at the location at which the explosives are stored, or to a law enforcement agency. Information received by a fire department pursuant to this section shall not be redisseminated except as provided in this section.

Amend Section 8.6.3 to read as follows:

8.6.3 Type 3 Magazines. A Type 3 magazine shall be a "day box" or portable structure used for the temporary storage of explosive materials. A Type 3 magazine shall be fire resistant, theft resistant, and weather resistant.

(1) The magazine shall be equipped with one steel padlock (which shall not be required to be protected by a steel hood) having at least five tumblers and a case-hardened steel shackle at least 9.5 mm (3/8 in.) in diameter. Doors shall overlap the sides by at least 25.4 mm (1 in.). Hinges and hasps shall be attached by welding, riveting, or bolting (nuts on inside).

(2) The magazine shall be constructed of not less than 12-gauge [2.66-mm (0.1046-in.)] steel, lined with at least 12.7-mm (½-in.) plywood or 12.7-mm (½-in.) masonite-type hardboard.

(3) Type 3 magazines containing explosive materials shall be within line-of-site vision of a blaster or, if not within line-of-site vision of a blaster, shall be secured if in a vehicle or in a secure building, facility, or area.

This rule is intended to implement Iowa Code section 101A.5.

[Filed 9/22/05, effective 1/1/06]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4574B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53,

"Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVIII; No. 3, p. 158, on August 3, 2005, as **ARC 4408B**.

Item 1 amends rule 701—40.1(422) to reference new rule 701—40.66(422).

Item 2 amends rule 701—40.62(422) to eliminate the limitation of $1,500 for the deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve. These are now covered by federal law.

Item 3 adopts new rule 701—40.66(422) to provide for a deduction for individual income tax for certain unreimbursed expenses relating to a human organ transplant.

Item 4 amends subrule 41.3(1) to provide that federal income taxes paid for a tax year in which an Iowa individual income tax return was not required to be filed are not allowed as a deduction in the year the federal taxes were paid. To clarify this provision, examples are included.

Item 5 amends subrule 41.3(2) to provide that federal income tax refunds received for a tax year in which an Iowa individual income tax return was not required to be filed are not required to be reported in the year the federal refund was received. To clarify this provision, examples are included.

Item 6 adopts new subrule 41.5(2) to provide that state sales and use tax is allowed as an itemized deduction for Iowa individual income tax only if the state sales and use tax was allowed as an itemized deduction for federal income tax purposes.

Item 7 amends subrule 41.5(7) to provide that the deduction for individual income tax for multipurpose vehicle registration fees is the same as allowed for federal income tax purposes for tax years beginning on or after January 1, 2005.

Item 8 amends subrule 41.5(9) to provide that the deduction for individual income tax for older motor vehicle registration fees is the same as allowed for federal income tax purposes for tax years beginning on or after January 1, 2005.

Item 9 amends subrule 41.5(11) by striking the current subrule and replacing it with the deduction allowed on the 2004 Iowa return in certain circumstances for charitable contributions made in January 2005 for relief of victims of the Indian Ocean tsunami.

Item 10 amends subrule 42.2(11) to include federal revisions made in 2004 and January 2005 in the research activities credit for individual income tax.

Items 11 and 12 amend subrules 52.7(3) and 52.7(5) to include federal revisions made in 2004 and January 2005 in the research activities credit for corporation income tax.

Item 13 amends rule 701—53.18(422) to provide that the deduction for corporation income tax for multipurpose vehicle registration fees is the same as allowed for federal income tax purposes for tax years beginning on or after January 1, 2005.

Item 14 amends rule 701—59.19(422) to provide that the deduction for franchise tax for multipurpose vehicle registration fees is the same as allowed for federal income tax purposes for tax years beginning on or after January 1, 2005.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 16, 2005, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 15.335, 15A.9, 422.3, 422.7, 422.9, 422.10, 422.32, 422.33 and 422.35 as amended by 2005 Iowa Acts, House Files 186 and 801, and 2005 Iowa Acts, Senate File 413.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [40.1, 40.62, 40.66, 41.3(1)"b," 41.3(2)"a," 41.5(2), 41.5(7), 41.5(9), 41.5(11), 42.2(11)"b," 52.7(3)"c," 52.7(5)"c," 53.18, 59.19] is being omitted. These amendments are identical to those published under Notice as **ARC 4408B**, IAB 8/3/05.

[Filed 9/22/05, effective 11/16/05]
[Published 10/12/05]

[For replacement pages for IAC, see IAC Supplement 10/12/05.]

ARC 4575B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 42, "Adjustments to Computed Tax," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVIII; No. 3, p. 161, on August 3, 2005, as **ARC 4407B**.

Item 1 adopts rule 701—42.21(422) to provide for an individual income tax credit for costs incurred by a manufacturer for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

Item 2 adopts rule 701—52.24(422) to provide for a corporation income tax credit for costs incurred by a manufacturer for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 16, 2005, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement 2005 Iowa Acts, Senate File 389, section 1, and Iowa Code section 422.33 as amended by 2005 Iowa Acts, Senate File 389.

The following amendments are adopted.

ITEM 1. Adopt **new** rule 701—42.21(422) as follows:

701—42.21(422) Soy-based cutting tool oil tax credit. Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit.

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.

REVENUE DEPARTMENT[701](cont'd)

4. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based cutting tool oil used in the transition.

5. The number of gallons used in the transition cannot exceed 2,000 gallons.

6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2005 Iowa Acts, Senate File 389, section 1.

ITEM 2. Adopt rule 701—52.24(422) as follows:

701—52.24(422) Soy-based cutting tool oil tax credit. Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit.

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.

2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.

4. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based cutting tool oil used in the transition.

5. The number of gallons used in the transition cannot exceed 2,000 gallons.

6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2005 Iowa Acts, Senate File 389.

[Filed 9/22/05, effective 11/16/05]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4555B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 13, 2005, adopted amendments to Chapter 11, "Waiver of Rules," Chapter 112, "Primary Road Access Control," Chapter 115, "Utility Accommodation," Chapter 500, "Interstate Registration and Operation of Vehicles," Chapter 505, "Interstate Motor Vehicle Fuel Licenses and Permits," Chapter 524, "For-Hire Intrastate Motor Carrier Authority," and Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 3, 2005, Iowa Administrative Bulletin as **ARC 4367B**.

These chapters are amended to remove language that indicates the Department or the Director of Transportation may waive an administrative rule on the Department's or the Director's own motion. The Iowa Supreme Court in AT&T Communications of the Midwest, Inc. vs. Iowa Utilities Board ruled that an agency cannot, under Iowa Code section 17A.9A, waive one of its own rules on its own motion. Rather, a person must petition the agency.

Chapters 11, 112 and 115 are amended to provide that a person requesting a waiver should relate the relevant facts and reasons for the requested waiver to the four criteria set out in Iowa Code section 17A.9A, subsection 2. This change is made because Iowa Code section 17A.9A, subsection 3, states that the "burden of persuasion rests with the person who petitions an agency for the waiver or variance of a rule."

Chapters 112 and 115 are amended to shift the authority to grant waivers under these chapters from the district engineer to the Director of Transportation and to provide that the Department will use sound engineering practices to determine the appropriate design for a specific situation when the literal application of the rules to the situation will result in an unsafe situation or an unreasonable design.

Other amendments to Chapter 112:

- Correct three definitions.
- Allow smaller culvert sizes where shallow ditches exist.
- Allow additional entrances to Priority V highways in rural areas if the entrances will comply with future construction plans for the roadway.
- Provide that the Department may acquire more or less than the stated number of feet of access rights at intersections and interchanges after considering the severity of damage to adjacent properties and traffic volumes and other safety factors.

TRANSPORTATION DEPARTMENT[761](cont'd)

• Provide that the Department will approve spacing for special access connections in accordance with subrules 112.12(2) and 112.12(3).

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 17A, 306, 306A, 319 and 320.

These amendments will become effective November 16, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 11, 112, 115, 500, 505, 524, 529] is being omitted. These amendments are identical to those published under Notice as **ARC 4367B**, IAB 8/3/05.

[Filed 9/14/05, effective 11/16/05]
[Published 10/12/05]

[For replacement pages for IAC, see IAC Supplement 10/12/05.]

ARC 4553B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 13, 2005, adopted amendments to Chapter 130, "Signing Manual," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 3, 2005, Iowa Administrative Bulletin as **ARC 4366B**.

Iowa Code section 321.252 requires the Department to adopt a manual and specifications for a uniform system of traffic control devices for use upon highways within this state. To fulfill this requirement, Chapter 130 currently adopts the Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition and Revision No. 1 to the 2000 Millennium Edition.

This rule making replaces the 2000 Millennium Edition and Revision No. 1 to the 2000 Millennium Edition with the 2003 Edition and Revision No. 1 to the 2003 Edition.

The MUTCD is issued by the Federal Highway Administration (FHWA) under 23 CFR Part 655, Subpart F. The FHWA's final rule adopting the 2003 Edition of the MUTCD was published in the Federal Register on November 20, 2003 (pages 65495-65583). The FHWA's final rule was preceded by a notice of proposed amendments published in the Federal Register on May 21, 2002. In the notice, the FHWA stated that its proposed amendments were a response to the many comments it received after the final rule creating the Millennium Edition of the MUTCD was published. The FHWA also stated that its proposed amendments addressed the advances in technology and the traffic and safety management strategies that had occurred since 1997, which was the year the process for compiling the Millennium Edition began. The notice provided a comment period, and the FHWA received 293 letters from state departments of transportation, city and county governments, private industry, associations and others.

According to FHWA's analysis of its final rule for the 2003 Edition of the MUTCD, most of the changes in the 2003 Edition "provide additional guidance, clarification, and optional applications for traffic control devices" and add "only a very limited number of new or changed requirements." The analysis also states: "The changes made to traffic control devices that would require an expenditure of funds all have future effective dates sufficiently long to allow normal maintenance funds to replace the devices at the end of the material lifecycle. To the extent the revisions require expenditures by the state and local governments on federal-aid projects, they are reimbursable."

The FHWA's final rule adopting Revision No. 1 to the 2003 Edition of the MUTCD was published in the Federal Register on December 1, 2004 (pages 69815-69819). The FHWA's final rule was preceded by an interim final rule published in the Federal Register on May 10, 2004. This interim final rule provided a comment period, and the FHWA received 36 letters.

Revision 1 to the 2003 Edition provides for the uniformity of service signs for 24-hour pharmacies when state and other jurisdictions choose to install these signs on public roads. States and other jurisdictions are not required to install these signs, but if they elect to do so, Revision 1 provides standards for the signs.

The FHWA's Web site http://mutcd.fhwa.dot.gov contains the 2003 Edition of the MUTCD with Revision 1 incorporated, older editions of the MUTCD, a table of phase-in compliance dates for the 2003 Edition, a document that compares the 2003 Edition and the Millennium Edition, a document that compares Revision 1 and the 2003 Edition, and links to Federal Register notices of proposed amendments, interim final rules and final rules relating to the MUTCD.

Iowa Code section 321.249 requires traffic control devices provided for school zones to conform to specifications included in the manual of traffic control devices adopted by the Department, except the provision prohibiting the use of portable or part-time stop signs. Chapter 130 currently contains two exceptions to adoption of the MUTCD to allow the use of portable or part-time stop signs in school zones. This rule making eliminates one exception that is no longer necessary and preserves the other exception.

This rule does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

This rule is intended to implement Iowa Code sections 321.249 and 321.252.

These amendments will become effective November 16, 2005.

Rule-making action:

Amend rule 761—130.1(321) as follows:

761—130.1(321) Manual. The "Manual on Uniform Traffic Control Devices" (MUTCD), ~~2000 Millennium~~ *2003* Edition ~~with~~ *including* Revision No. 1 ~~changes~~ dated ~~December 28, 2001,"~~ *November 2004*, published by the U.S. Department of Transportation, Federal Highway Administration, shall constitute the manual and specifications for a uniform system of traffic control devices for use upon the highways of this state.

130.1(1) The department makes the following ~~exceptions~~ *exception* to the MUTCD for school zones:

TRANSPORTATION DEPARTMENT[761](cont'd)

~~a.~~ In Part 2, Section 2B.05 of the MUTCD, STOP Sign Applications, Standard, in lieu of the sentence "Portable or part-time STOP signs shall not be used except for emergency and temporary traffic control zone purposes," the department adopts the following ~~sentence~~: "Portable or part-time STOP signs may be used *only* in *the following situations:*

1. When necessary for emergency and temporary traffic control zone purposes, or

2. In school zones at appropriate school crosswalks."

~~b. In Part 7, Section 7A.04 of the MUTCD, Scope, Standard, in lieu of the sentence "Portable school signs shall not be used," the department adopts the following sentence: "Portable or part-time STOP signs may be used in school zones at appropriate school crosswalks."~~

130.1(2) Copies of the ~~manual~~ *MUTCD* are available for examination at the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010~~,~~ . ~~or may be reviewed through~~ *The MUTCD is also available on* the Internet at http://mutcd.fhwa.dot.gov.

This rule is intended to implement Iowa Code sections 321.249 and 321.252.

[Filed 9/14/05, effective 11/16/05]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

ARC 4554B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 13, 2005, adopted amendments to Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 3, 2005, Iowa Administrative Bulletin as **ARC 4376B**.

These amendments:

- Rescind subrule 511.16(4) to assist in more uniform interpretation of Iowa Code section 321E.16. This subrule is not needed since Iowa Code section 321E.16 addresses the same issue.
- Update paragraph 511.8(1)"e" to include an Internet address for oversize load detour and road embargo information.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 321 and 321E.

These amendments will become effective November 16, 2005.

Rule-making actions:

ITEM 1. Amend paragraph **511.8(1)"e"** as follows:

e. Routing. The owner or operator shall select a route using a vertical clearance map, kip map, bridge embargo map and detour and road embargo map provided by the department. *Detour and road embargo information may also be found on the Internet at www.511ia.com.* The owner or operator shall contact the department by telephone at 1-800-925-6469 between 8 a.m. and 4 p.m., Monday through Thursday, except for legal holidays or at any other time at (515)237-3206 prior to making the move to verify that the owner or operator is using the most recent information.

ITEM 2. Rescind subrule **511.16(4)**.

[Filed 9/14/05, effective 11/16/05]
[Published 10/12/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/05.

UTILITIES DIVISION

At its September 13, 2005, meeting, the Administrative Rules Review Committee voted to object to the provisions of **ARC 4342B**, rule 199 IAC 15.18. This filing was implemented on an "emergency" basis and appeared in IAB Vol. XXVIII, No. 02 (7/20/05). This filing implements the statutory provisions of both Senate File 390 and House File 882; the terms of this objection apply to this filing only to the extent that the filing implements House File 882.

The committee objects to paragraph 199 IAC 15.18(1)"d", relating to the required documentation to demonstrate a market for the wind energy, on the grounds that it is beyond the authority of the Utilities Board. House File 882 requires, in §166: *"A copy of an executed power purchase agreement or other agreement to purchase electricity..."* The rule language states: *"If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; this designation shall not be subject to change."* The committee believes that the language of the Act clearly demonstrates a legislative intent that only an executed power purchase agreement or other executed agreement that has a similar force and effect can be accepted in the application process.

The committee objects to the "emergency" implementation of **ARC 4342B**, as it relates to the implementation of House File 882, on the grounds that it was unreasonable to put these rules into effect without a prior opportunity for public notice and comment. The rules contain a number of significant and contentious issues relating to the tax credit; issues include the definition of an eligible applicant and the selection process for awarding credits. In addition, this is not an ongoing program; the wind project in House File 882 is limited to 450 megawatts, and once the awards have been made there is no current provision for future awards. Because of the variety of issues dealt with by the rules, the level of controversy surrounding the rules and the limited duration of the program, committee members felt that the value of placing these rules in immediate effect did not outweigh the value of having public review and participation in the decision-making process. The committee also objects to this emergency implementation because it placed the rule into effect before House File 882 itself became effective. **ARC 4342B** was placed into emergency effect on June 20, 2005; the effective date of House File 882 was July 1, 2005. A rule cannot be made effective or be implemented in any way until the statute itself is effective. This action is taken pursuant to the authority of Iowa Code §17A.4. The effect of this objection is to terminate the emergency filing 180 days after this objection is filed.

The committee objects to the provisions of paragraph 199 IAC 15.18(1)"b" on the grounds that it is unreasonable. The amendments to Iowa Code §476B.5(2), as provided in House File 882, state: *"[a]n owner shall not be an owner of more than two qualified facilities."* Paragraph 199 IAC15.18(1)"b" requires only *"...a statement that owners meeting the eligibility requirements of Iowa Code Section 476B.5 ... are not owners of more than two eligible renewable energy facilities."* The committee feels the statutory language evidences a clear legislative intent that the board should consider both direct and indirect ownership interests and not rely solely on corporate business structures to determine ownership. The committee notes that of the seven projects awarded eligibility under the House File 882 program, credits were awarded to at least five entities with the same equity owners.

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